NOMOTOMIA,

IN TWO PARTS.

THE FIRST

Being a Collection and Survey of the Generall Titles of the

COMMON LAW,

With the Caſes thereof, drawne out of all the Old Books of LAW, and later Reports, and reduced into ſeverall Chapters, Sections, and Diviſions, for the uſe and benefit of all Practiſers and Students of the COMMON LAW.

THE SECOND PART,

Being an Exact Abridgment of all the ACTS and Publique ORDINANCES of PARLIAMENT, ſince the yeare 1640. to this preſent time.

As alſo of diverſe Ordinances and Publique Orders, made by his Highneſſe the Lord Protector, with the advice of his Councill in the Intervalls of Parliament, for the uſe and benefit of all the People of the Common Wealth of *ENGLAND*, *SCOTLAND*, and *IRELAND*.

Both Collected and Publiſhed
By WILLIAM HUGHES of Grays Inne Eſq;

With two exact Tables, in which may be found the Principall matters therein contained

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LONDON,
Printed by *T. R.* for *H. Twyford*, *T. Dring*, and *J. Place*, and are to be ſold at their Shops in Vine Court middle Temple, the George in Fleetſtreet neer Cliffords Inne, and at Furnivalls Inne Gate in Holborne, 1657.

To the Right Honourable, Sr *THOMAS WIDDRINGTON*, Kt. Serjeant at the Common Law, One of the Lords Commiſſioners of the Treaſury of *England*, Speaker of the Parliament of the Common wealth of *England*, *Scotland*, and *Ireland*, Aſſembled the 17th. of *September*, 1656.

My Lord,

TWO yeares paſt, there was brought unto mee a Book, made and publiſhed in Print, in the time of the late Queen *Elizabeth*, under the Name of an unknown Author, conteining certain Titles of the Common Law of *England*, and the Caſes thereupon, diſtributed into Chapters, Sections, and Diviſions, which was written in the French tongue: Which Booke (having beene begun in ſome ſmall part thereof, not exceeding five or ſix ſheets of Paper, to be tranſlated by a perſon altogether unknown unto me) either in reſpect of the difficulty of the worke, or the unwillingneſs of the perſon to undertake the Labour which hee ſhould have beſtowed in the Tranſlation, or for ſome other cauſe, was not proceeded in. The ſaid printed Booke, with ſo much thereof as was tranſlated being left with me, I was requeſted to peruſe it, to examine that part thereof which was tranſlated, to compare it with the Originall, and to examine the ſeverall caſes therein, with the Term Books, Abridgments, and other Books, out of which the Caſes were extracted, to tranſlate the remaining part, to

correct ſuch errors or miſtakes, as I ſhould find in the Imprinted Originall, and to add ſuch further matter and Caſes thereunto, as might make the ſame to be a perfect work, uſefull and beneficiall for all Student of the Common Law. This (my Lord) being a task which required time, care and ſtudy for the accompliſhment thereof: I took ſome time to conſider of it, at the laſt, upon the perſwaſion of ſome freinds, and ſome other encouragements, I undertook both the tranſlations, as alſo to make it a compleat and perfect work. For the doing of which, I have peruſed all the bookes, and caſes cited in the firſt Impreſſion, corrected all ſuch Errors and other miſtakes (which were many) as were in the firſt Impreſſion, or the tranſlated part thereof: I have added thereunto many new titles of the Law, which were not in the firſt Impreſſion with the caſes therein, in the ſame Method by way of Chapters, Sections, and Diviſions, as the firſt worke was: And I have added unto every of the titles of the firſt Impreſſion, ſuch materiall caſes, and points of Law, as I could finde or remember, to have been publiſhed or reported in print, ſince the time of the ſaid late Queen, beſides ſome Marginall Notes, ſo as the enlargment of this preſent whorke, is neer as much again as was the firſt Impreſſion, it being therfore now made as a new thing, I have cauſed it to be imprinted under a new title, which I have called, the firſt part of Νομοθεσία.

The ſaid firſt worke (My Lord) being finiſhed, I took into my conſideration, the many Acts and publick Ordinances of Parliament, made ſince *Anno* 1640. unto this preſent time, moſt of which being imprinted in many parcells, and ſcattered ſheets of Paper, (very hard now to be gotten together) I conceived, (if the ſame might be abridged,

abridged, and brought into one Volume, according to the Series of time, they were made and publiſhed in) it might with a little charge be bought, and ſo made uſefull to all the people of this Common-Wealth, all the Acts of Parliament, and many of the ſaid Ordinances being yet in force, and binding the people in their Eſtates, Rights, and Intereſts. And further I conceived, that by ſuch a work, moſt of the tranſactions of the late long Parliament (which continued neer thirteen years) might be viewed, conſidered and taken notice of: theſe (my Lord) were ſome of the Motives (amongſt others) that (this laſt year) induced me to collect and make an Abridgment of all the ſaid Acts of Parliament and publick Ordinances, as alſo of other Ordinances and publick Orders, according as is mentioned in the title Page of the ſecond part of my Νομοθεσία: Both parts of which being now finiſhed, I have cauſed to be imprinted and publiſhed, for the good and eaſe of all the people of the Common-Wealth, and for the uſe and benefit of all Students of the Common Law, *Gratum ſpero opus.*

My Lord, I have taken the boldneſſe upon me to publiſh theſe my weak Labours under the Patronage of your Lordſhip, which I have done for many reſpects. Firſt, Becauſe your Lordſhip in the opinion of all men, is, and hath ever been accounted, a great Lover, and a conſtant maintainer and Defender of the Common Law of this Nation. Secondly, Becauſe your Lordſhip being now in that high place of Honour (Speaker, or Prolocutor of the Parliament) a Part of the Legiſlative power doth reſide in your Lordſhip, and the Parliament, an evident proof of which, is that *Geſtamen Honoris* which is born before your Lordſhip, (as the like was) which is elegantly

ly expressed by *Virgil* in the seventh book of his *Æneids*, for when the Ambassadors of *Æneas* presented some of the Reliques of *Troy* to *Latinus* King of *Latium*, it is sayd of the same

Hoc Priami Gestamen erat, cum jura vocatis
More daret Populis ——

But especially (my Lord) in a thankfull acknowledgment of the great favours, which I have ever received from your Lordship, which I know not how otherwise to expresse, then in these kind of Presentments; Pardon I beseech your Lordship this my great boldness, & to accept of these my weak endeavours, and performances, published in the seventieth year of my age; and if your Lordship shall be pleased at any time hereafter, to cast your eyes upon these works, or shall peruse the same, I humbly beseech your Lordship to passe by the Errors I have run into in the whole work, and so I leave it to the favourable censure of your Lordship, wishing unto your Lordship, increase of Honour here upon Earth, and the eternall happinesse of Heaven hereafter: For which the Prayers shall never be wanting of

Your Lordships most obliged and
sincerely Devoted Servant,

WILLIAM HUGHES.

Errata.

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THE ABRIDGEMENT OF CASES

Concerning the Titles moſt materiall for the Students and Practiſers of the LAWES of the Realme:

Digeſted into certaine apt Diviſions under the ſame Title; done into Engliſh for the benefit of the younger Students.

Abbot, Prior, Parſon, Biſhop, Dean, Maſter of a Colledge.

I. *In what perſon the Propert, of Goods, and right of Land is.*

NOTE, That the property of the Goods of an Abbot is in the Abbot, and in the Houſe alſo; adjudged 9 *H.* 6. *fol.* 25. *Abbot* 1.

Note, By the Court it was adjudged, That if a Leaſe were made to an Abbot for life, and he is after tranſlated to another Abbey, the ſucceeding Abbot ſhall have this Leaſe during the life of the Leſſee, which was the Abbot. 5 *H.* 7. *Abbot* 6.

Paſton ſaith, That an Abbot may have Goods, and no right in the Houſe, as a gift of Goods to an Abbot and to a Stranger, they be joynt Tenants, and the Houſe hath no right therein.

Arden ſaith, If an Obligation be made to an Abbot onely, and afterwards

wards he is made a Biſhop, his Succeſſor ſhall have the Obligation: So alſo if he had recovered damage for Battery done unto him, and before execution he is choſen Abbot of another place, his Succeſſor ſhall have a *Scire facias*; and ſo he ſhall anſwer the Iſſues loſt by his Predeceſſor, *per Pole*, 22 *H.* 6. *f.* 4. *Debt* 46.

II. *Where a Leaſe made by an Abbot, Biſhop, or Parſon, without the Covent, Chapter, or Patron, ſhall bind the Succeſſor, and where the agreement after ſhall make it good, and what ſhall be ſayd to be a ſufficient Agreement.*

IF the Succeſſor accept the Rent reſerved upon the Leaſe, made by the Abbot or Pryor alone without the Covent, he ſhall never avoyd it, 37 *H.* 6. *fol.* 4. *Abbe* 2. 4 *Ed.* 3. 14. *Vide* 15 *Ed.* 4. 17.

Note, That the Grant of the Abbot alone of an Advowſon by him made, is determined by his death, and cannot be made good but by agreement with the Succeſſor: Otherwiſe it is of a Leaſe for yeares of Land, which may paſſe by word, 21 *Ed.* 4. *fol.* 5. *Abbe* 5. *Vide* 11 *H.* 4. *fol.* 17. That the Agreement is a new Leaſe.

Note, If a Parſon make a Leaſe for life and dye, *&c.* and the Succeſſor accept fealty, he ſhall never avoyd the Leaſe during his life, *Juris utrum*, 3 *P.* 11 *Ed.* 3. *Abbe* 9.

A Leaſe of a Biſhop is good by confirmation afterwards of the Chapter, upon iſſue, if the Biſhop were dead before the Confirmation, 31 *Ed.* 3. *Abbe* 10.

Prebend doth Leaſe his ſervices to the Ter-tenant for yeares, this is good; and the agreement of the Succeſſor, that ſuch Termor may hold over, *&c.* is a good new Leaſe; and if another were Tenant, he ought to have a new Attorneyment, 11 *H.* 4. *fol.* 17.

III. *Where the Abbot or Prior ſhall prejudice the Houſe by his owne act.*

NOte, That an Abbot or Pryor ſhall binde his Succeſſor by his owne Deed which is of Record; as if he confeſſe the Deed in a Writ of Annuity brought againſt him, 7 *Ed.* 4. *fol.* 12. *Abbe* 3. *Vide* 34 *Aſſiſe P.* 7. *Corone* 81.

So if he confeſſe a Deed in action againſt him, 20 *H.* 6. *Abbe* 22. *in Debt.* So of a Recognizance, although the thing come not to the uſe of the Houſe, *&c.* For to no matter of Record the Covent cannot be party, *M.* 14. *Ed.* 4. *Abbe* 4. and 16 *Ed.* 3. *Abbe* 8 & 13. where it is alſo agreed,

agreed, That a Fine and every agreement upon Record is executory againſt the Succeſſor, and of Recognizances agreed 8. *E.* 3. *fol.* 24., but there the Recognizance of a Prioreſs was refuſed by *Herle*, becauſe the Court did not know that ſhe was Prioreſs.

Confeſſion of a Deed, or of an action in the predeceſſor bindes the Succeſſor, 34 *Aſs. P.* 7. Otherwiſe it is in matter in fact, when it is not to the uſe of the houſe. And for that the Succeſſor was not bound by the Obligation of his predeceſſor, made when all the Covent was dead of the plague--8. *H.* 5. *fol.* 10. *Abbe* 28. Seiſin of divers ſervices encroached upon an Abbot ſt all not binde his Succeſſor, *M.* 4. *Ed.* 2. *Avowry* 204.

Note. The Succeſſor ſhall be bound by Covenant of an Indenture made by his predeceſſor alone in defeazance of an Obligation made by him alone, 47 3 *Ed.*. *fol.* 23. *Barr.* 221.

Debt againſt the Abbot of *Fountaines* upon the Deed of *F.* his predeceſſor, and the Covent, where in fact the ſaid *F.* was choſen by ten Monks, and the Def. by twenty two; their foundation being that he was a perfect Abbot by Election without other inſtitution, &c. but of their Viſitor; by which Inſtitution *F.* did enter, and with the aſſent of the Covent he made the Deed. And it was held void, becauſe he was not Abbot, but the Defendant was. As if a Parſon enter without *Inſtitution* or *Induction*, his Deed ſhall be void, notwithſtanding the confirmation of the Patron afterwards. But the Grant of an Abbot which is degraded after, or depoſed for any thing done before that he was Abbot, continueth good, 9. *H* 6 *fol.* 32. *Debt.* 29. So if he give over, or reſigne, as 29. *Ed.* 3. 16,

A man ſent an Abbot 20. *l.* for the uſe of the Houſe, and the Abbot alone was bound by Obligation for the payment, and dieth. Now the Contract is determined by the Opinion of *Newton* Judge, and he ſhall have no remedy againſt the Succeſſor; but *Aſcue* ſaith, that it is not determined, becauſe the Contract bindes the Houſe, and the Bond the Abbot only, and ſo ſhall haue good remedy againſt the Succeſſor, if he declare upon the Contract, and not alledge the Obligation, 20. *H.* 6. *fol.* 21. *Debt.* 41.

So ye ſee the Contract of the Abbot without Deed bindes the Houſe, when it comes to the uſe of the houſe, and this ſhall be averred as well, as when he made an Obligation for the payment, as it was agreed, 20. *H.* 6. *fol.* 45. *Debt.* 40. where the former Abbot made an Obligation of paiment for Victuall, bought to the uſe of the Houſe, and all this did not make the Count to be double, for the Contract is but the conveyance to the Action.

An action of debt brought againſt the Succeſſor for 10. *l.* lent, which came to the uſe of the Houſe: *Newton* ſaith, that the better pleading is to alledge this generally, and not how in particular they came to the uſe of the Houſe, and ſaith, if they were ſpent in an action of Battery brought againſt the Abbot, this is a good uſe, becauſe the Houſe ſhall be charged with the dammage 22. *H.* 6. *fol.* 56. *Debt.* 50. It is fit to ſhew where they came to the uſe of the Houſe, 2. *Ed.* 4 *fol.* 14.

In debt againſt a Succeſſor, declares upon an Indenture of the Predeceſſor, which recites how he was in debt to the Plaintiffe, upon account in 100 *s.* which came to the uſe of the Houſe, and by this his Deed acknowledged to be bound in 100 *s.* and the Count was held good, not double: For it behoved him of neceſſity to averr the coming to the uſe of the Houſe, and upon that had iſſue. *M.*2.*Ed.*4.*fol.*14.*Debt* 70.

An Abbot and a Parſon had debate concerning Tithes, and referred themſelves to the arbitrement of a Deane, who did Order that the Abbot ſhall have the Tithes, and ſhall pay the Parſon and his Succeſſors ſuch an Annuity; and although that the Patron and Ordinary were no parties, yet it was held to be good; and that the Succeſſors of the Abbot ſhall be charged with the annuity, and it ſeemeth, becauſe they had *Quid pro quo*. *M.*11.*H.*4.*fol.*4. *Entre* 36.& 11.*H.*4. *fol.* 68.*Scire facias* 71.

Note, If a Prior Donatiue removeable, which hath no Covent or common Seale, not is not impleadable, leavies a Fine of Land or Rent, the Succeſſor ſhall be concluded hereby in all reſpects. By all the Juſtices. *M.* 2.*Ri.*3.*fol.*5. *Eſtoppell* 82.

Releaſe of an Abbot to him that had committed waſte, doth not barr his Succeſſor from his action; but ſatisfaction with an acquittance will. 42.*Ed.*3.22. Waſte 72.

IV. *Where, and by what words in a Deed the Abbot ſhall binde the Succeſſor and the Covent, and where the Date is materiall.*

DEbt againſt an Abbot upon the Deed of his Predeceſſor, which was, That *S.* the predeceſſor, with the aſſent of his predeceſſor and his Covent, had bound himſelfe, and the date was out of the County where the Abby was; and it was agreed, that the Deed was not good againſt the Succeſſor. *H.*14.*Ed.*3.*Abbe.*11.

But ſee 14 *H.*6.*fol.*16.*Debt* 35. That the date elſewhere is not materiall, for it may be the Deed was delivered there, *&c.* Alſo if the Deed be, In witneſs whereof I have with the aſſent of the Covent put the Seale of the Covent, this ſhall binde the Succeſſor.

And it is enough to ſay, In witneſs whereof we have put our Seale, without ſaying *common*; for if the Abbot and Covent Seale a Deed with my Seale, this ſhall binde them, which was granted, and the Covent Seale will not binde the Succeſſor, without the conſent of the Covent. See 22 *H.*6. *fol.*4.*Debt.*46. And ſee 18 *Ed.*2.*Debt.*147. That in debt upon ſuch Deed againſt the Succeſſor, he ſhall not aver that this is not the Covent Seale, but ſhall anſwer, whether their Deed, or not.

The Succeſſor ſhall not be bound by a Deed ſealed with the Covent Seal by the Covent, if they forced to do it by compulſion, as Impriſonment, *&c.* where not acknowledging this which they have done, and that it is not the act of the Covent, ſhall be a good Plea: So alſo the Deed ſhall

be

be well avoided, by alledging that the Abbot impriſoned the Covent, *&c.* and not that he impriſoned *A. B. C. D.* which made the Covent, *& eper Coke*, 38 *H.* 6. *fol.* 27. *Dures* 2.

Debt againſt an Abbot alien upon a Deed of the ſame Abbot and Covent; and the Juſtices were cleer of opinion the Action would not lye here, for that the Deed bore date in *England*, and the Abbot was out of the Realm; ſo that it could not be intended that the Covent did know of it, *Tr.* 13 *Ed.* 3. *Abbe* 12.

Debt againſt an Abbot and Covent upon the Deed of the Predeceſſor and Covent, and challenged becauſe it was dated before ſuch time as the Abbot had the Common Seal, and it was not allowed: But the iſſue was, whether it were the Deed of the Abbot and Covent, *Hillar.* 20 *Ed* 3. *Abbe* 14.

Note, where a Deed beareth date in the Chapter houſe, it ſhall be intended where the houſe is, and not elſewhere; otherwiſe it is of a date in another certain place, where the Chapter houſe is not mentioned, for it may well be there, 9 *Ed.* 4. *fol.* 39.

Debt againſt an Abbot upon the Deed of the Sub-pryor, Officers and Monks, in the time of the Vacancy, reciting that the money came to the uſe of the houſe, binding them and him that ſhould be their Abbot, and it was good, 7 *E.* 3. *fol.* 35. *Abbe* 16.

V. *Where a Monk of a Houſe, or other ſhall bind the Abbot and the Succeſſor by Obligation and Contract, and whether a Pryor donative and removable ſhall bind the Abbot.*

THe Abbot ſhall be charged by Contract made by an Officer of the houſe, to the uſe of the houſe, 25 *Ed.* 3 *fol.* 12. *Abbe* 19.

So by ſuch Contract of any Monk, by *Forteſcue* 22 *H.* 6. *fol* 4. and this ſhall bind the Succeſſor, although he which made the Contract was not a Monk at that time, but ſhall anſwer whether it came to the uſe of the houſe, 22 *Ed.* 3. *fol* 8. *Abbe* 15.

So of ſuch Contracts made by Monks in the time of the Vacancy, 7 *Ed.* 3. *fol.* 35. *Abbe* 16.

In Detinue, ſhews that he delivered Writings to a Monk, with the aſſent of the then Abbot, againſt the preſent Abbot and the ſame Monk, they were at iſſue upon the Bailment, *M.* 3. *Ed.* 3. *fol.* 46. *Abbe.* 18.

In Debt againſt an Abbot, and D. his Com-monk of C. for letting go at large one who was condemned in the Court of D. Pryor Donative of A. where he had to do, and the Writ abated for naming D. but otherwiſe it ſhall be of a Contract made before entry into Religion, *P.* 45. *Ed.* 3. *fol.* 9. *Debt* 130.

In Debt againſt the Maſter of a houſe upon the Deed of the Predeceſſor, with

with this, that the thing came to the uſe of the houſe. *Sadler.* At the time of the making of the Deed, there was neither Maſter, Covent, nor Common Seal, nor any Lay Brother of the houſe, and he who made it was not Maſter, but Deputy of the Biſhoprick, and the opinion of *Wilby* and *Stouf* was, that he might well demur upon the Deed, yet the iſſue was, whether it came to the uſe of the houſe 25 *Ed.*3 *fol.*12. *Det.*141. 26 *Ed.*3 *fol.*1.

In Debt againſt an Abbot and Com-monk, upon an Obligation made by the Com-monk before he entred into Religion, and the common opinion of the Court was, that it did not lye, becauſe there came therby no benefit to the houſe, *H.*13. *H.*4. *Debt* 167.

Note, an Abbot was charged by Deed of his fellow Monk, for Wooll bought, with averment, that it came to the uſe of the houſe, as if it ſhall be a Contract of my Servant, for a thing which cometh to my uſe, 4 *Ed.*2. *Debt* 168.

In Debt againſt an Abbot upon the Deed of T. his Predeceſſor and the Covent, it ſhall be a good anſwer to ſay, that the ſaid T. was not Abbot at the time, but F. or H. 10 *Ed.*3 *fol.*11. *Debt* 15. *ſee* 9 *H.*6 *fol.*32. *Debt* 29.

See, that a Fine levied by a Pryor donative, who had no Common Seal, doth bind the Succeſſor, *M.*2. *M*3 *fol.*5: *Eſtoppell* 82. *Trin.* 11 *H.*4. *fol.* 68.

A Confeſſion of a Sub-pryor in the time of Vacancy ſhall bind the houſe, 9 *Ed.*3 *fol.*16. *Quare impedit* 30.

Thirning ſaith, that the Pryor which hath a Covent and Common Seal, may well charge the houſe, without having *Quid pro quo*; And our Maſters have adjudged a Grant not effectuall to himſelf, in Law to be of good effect, where the houſe had *Quid pro quo*, 11 *A.*4 *fol.*68. *Scire facias*, 71 & 12 *H.*4 *fol.*11. *Scire facias* 73. and ſee *M.* 16. *Ed.* 3. *Annuity* 24. That a perſon alone ſhall bind the Succeſſor having *Quid pro quo*, *&c.* Tithes for an Annuity.

VI. *How an Abbot ſhall be made, and who may be made an Abbot, and who ſhall be ſaid Abbot to bind his Succeſſor, &c.*

AN Abbot ſhall be made by election of the Monks, and the Inſtitution of an Ordinary, or their Viſitor, as the Abbot of *Fountaines*, and he that hath moſt Voices ſhall be Abbot, and every thing done by him who was in election, and elected by the leſs number of Voices, is void, though he were inſtituted by the ſaid Viſitor. 9. *H.*6. *fol.*32. *Debt.*29.

A Lay-man cannot be an Abbot, but if he be choſen (ſaith *Green*) he ſhall be holden for Abbot againſt every man, untill ſuch election be reverſed: And *Hill* ſaith, that he ſhall anſwer to every man as Abbot, but if he be to uſe an Action as Abbot, perhaps it may fail, *Trin.*20. *Ed.*2. *Conuſans* 46.

Note,

Note, a ſecular Clerk ſhall not be choſen Pryor, but he ought to be Regular, *&c.* H. 11. *Ed.* 3. *Quare impedit* 157. and ſee there that the Founder preſented to the Pryory without election.

VII. *Where an Abbot, or Pryor, or Biſhop ſhall be bound by his Deed, which he made when he was a Monk, or Abbot, or Pryor of another place.*

IN account againſt the Abbot of S. by Executors, for the time that he was Bayliff of the Mannor of their Teſtator, where in truth the Defendant was a Monk, and not Abbot at that time, yet the Action lyeth H. 20. *Ed.* 3. *Accompt* 78. where the Abbot and Covent are bound, and the Abbot is made a Biſhop, now he is diſcharged for that time in which he was neither Pryor nor Biſhop, and the new Abbot and Covent ſhall be charged, *M.* 22. *H.* 6. *fol.* 4. *Debt* 46.

But if he were bound alone without the Covent, and afterwards he be made Biſhop, now he ſhall be charged notwithſtanding that ſame time, and the houſe diſcharged: And *Bryan* ſaith, that when the Soveraign is tranſlated from one Abbey to another, there is no mean time *P.* 5. *H.* 7. *fol.* 24 And note, that a man ſhall not avoid his Deed when he was Abbot at the time of the Deed made, and Abbot at the time of the Suit, though of another place, becauſe at every time he is a perſon able to be ſued, *Debt* 102. *&* 3 *H.* 7 *fol.* 11. but in both theſe caſes the Abbot was tranſlated from one houſe to another; and *quare*, whether there be any dverſity between ſuch tranſlation, and the creation and tranſlation of a Biſhop.

VIII. *Whether the Succeſſor ſhall have any thing where an Obligation is made to his Predeceſſor.*

IF an Obligation be made to an Abbot alone, the Succeſſor ſhall have it, although he be not dead but tranſlated; the ſame Law is where he ſhall recover damage for Battery done unto him, and before execution he is Abbot of another place, the Succeſſor ſhall have *Scire facias*, 22 *H.* 6. *fol.* 4. *Debt* 46. See ſuch matters 5 *H* 7. *fol.* 25. And of the Obligation agreeth, 47 *Ed.* 3. *fol.* 23. *Debt* 134.

IX. *Where*

IX. *Where the Abbot and his Com-monk ſhall be charged, and where the Abbot charged for the debt of the Monk, and where the Sub-pryor or Monk ſhall be ſued alone without the Soveraigne.*

IN debt againſt an Abbot and Pryor *Donative* upon the eſcape of a Priſoner, who was condemned in the Faire of the Pryor. The Writ abated for naming the Pryor. 45 *Ed.*3.*fol.*9. *Debt.*130.

In debt againſt an Abbot and Com-monk, upon an Obligation of the Monk made before his entry into Religion, abated by the Opinion of the Court, for that no benefit came to the Houſe thereby. *H.*13. *H.*4.*Debt* 167. *vid.P.*9.*E.*2.*Debt* 171.

In detinue againſt an Abbot and Com-monk for corne delivered to the Monk to be re-delivered; and the Declaration was naught, by which was alledged the delivery to the Monk to deliver to the Abbot, upon condition that he ſhould have it againe upon demand made, or otherwiſe the Abbot ſhould detaine it, *&c.* and the Writ abated for naming the Monk. *Tr.* 2 *H.*4.*fol.*21.*Detinue* 34.

The ſame Law is of a contract made by an Abbot and a Monk of money lent to them, and the contract was made by the Monk, being an Officer of the Houſe; for the action ſhall lie againſt the Abbot alone, otherwiſe it ſhall abate: but in Treſpaſs the Monk ſhall be named, becauſe he is to be impriſoned. *H.*33.*Ed.*3.*Brief* 913. See 45, *Ed.*3.*fol.*9.

Waſte againſt the Abbot and *B.* his Chanon as Guardians is good, with averment, that the Chanon was ſuch Pryor, and that the Guardianſhip was to them in common, or to the Pryor alone who made the waſte, and now is Chanon, *&c.* For then the Abbot ſhall be charged, becauſe of his body, when he was ſole Guardian, *&c.* during his life and not after. And *Kirton* ſaith, That for that part which belonged to the Pryor, now Chanon, the action ſhall be againſt his Succeſſor. And note, That this Writ lieth not but where they were joynttenants, and made the waſte, when the Chanon was Pryor, *&c.* 49.*Ed.*3.*fol.*25. *Waſte* 95.

See there, If an Abbot Guardian make waſte and is depoſed, the action ſhall lie againſt the Succeſſor, not, if he die. In like manner the Abbot ſhall be charged with waſte done by his Monk, which the Succeſſor ſhall not be. Likewiſe an Abbot ſhall be charged with Treſpaſs done by his Monk while he lives, but not after his death, for the Monk ſhall be named in the action, not in the waſte. 49.*Ed.*3.*fol.*25.

In a *Quare impedit*, brought by a Patron of a Pryory in the vacancy againſt the Subpryor and the Covent, and recovered upon their knowledgment of a Coven between their predeceſſors and the Plaintiffs Anceſtors, upon which the preſentment to the Churches void during the vacancy ſhould be reſerved to the Anceſtors of the plaintiffe and his heires. *P.*9.*Ed.*3.*fol.*16. *Quare impedit.*20.

See

See ſuch like Writ maintained, *H.*11. *Ed.*3. *Quare impedit* upon a Preſentation to a Pryory, without any election of the Founder.

X. *Whether a Writ ſhall be ſued forth againſt a Monk, and where a Monk ſhall ſue forth a Writ without his Soveraigne, and where a Frier or Prior of Friers.*

A Monk ſhall not be named in debt, detinue, or waſte, *&c.* but in Treſpaſs, and ſuch caſes where his body is to be impriſoned for the King. See the diviſion next before *cap.*2. and where the Abbot ſhall not be charged by his body for any thing by him done before his entry into Religion. 5 *H.*7. *fol.*25. 45 *Ed.* 3. *fol.* 9. 4 *Ed.* 2. *Debt* 168. 13. *H.*4. *Debt* 167. 9 *Ed.*2. *Debt* 171. 2 *H.*4. *fol* 21. 33 *Ed.*3. *Writ* 913.

Debt upon an obligation againſt *R. B.* Prior of the Friers Carmelites of *L. T.* his Cor-fryer, and others, and the Writ was good if he were the Pryor of the Friers of the ſame place, the day of the purchaſe of the Writ, and he plead this matter to the Writ. *H.*3 *H.*6. *Debt* 20.

The Guardian of the Friers Minors of *L.* brought an action of Treſpaſs for taking away his ſervant and clothes, the action good; the other juſtifies the repriſall from his Son taken away within age, and not profeſſed, and *M.*11. *H.* 4. *fol.*31. *Baron* 179.

Premunire for the Abbot of *D.* againſt *I. S.* late Monk of the ſame place, and the addition was held not to be good; and that (late) ought not to be put to the myſtery of a man, but this ought to be alledged directly in fact. *P.*9 *Ed.*4. *fol.*2. *Writ* 169.

Quare impedit for the King againſt a Biſhop, and *I. S.* his Com-monk, and it was good, becauſe the Monk had been Prior of the ſame Church, *&c.* for it is to deſtroy the name Prior, otherwiſe he ought to have named his Soveraigne. 14 *H.*4. *fol.*36. *Writ* 496.

Treſpaſs lieth not againſt a Monk, and others without naming the Soveraigne of the Monk *M.*9. *En.*2. *Writ* 840.

Falſe impriſonment againſt the Abbot and Covent, the Writ is good, and the Abbot ſhall have Conuſance, *M.*18. *Ed.*3. *Conuſ.*39.

Note, That in caſe of felony, the Monk ſhall be ſued without his Soveraigne, and ſhall anſwer without him, 29 *H.*6. *Coron.*17.

Appeale againſt *I.* Abbot of the Monaſtery of *M.* and *&c. I. H.* Canon of the Monaſtery of *M.* This word (*Canon*) is void, becauſe it is not alledged what Canon it is, but Proceſs ſhall be made againſt *I. H.* and the iſſue ſhall be, whether there be no ſuch *I. H.* and not whether no ſuch *I. H.* Canon, for that is void 6 *H.*7. *f.*7. *Corone* 64.

Treſpaſs againſt an Abbot and his Com-monk is good, and their plea ſhall be joynt, but the Record ſhall be entred ſeverally, ſo that every Monk may plead for himſelfe ſeverally without the Abbot, *M.*38. *Ed.*3. *fol.*25. *Damages* 63.

An account againſt a Prior of a receipt of his Com-monk before he entred into Religion, the Prior ſhall have his Law, 2 *H.*5. *fol.*3. *Ley* 67.

Scire facias againſt the Fryers *Carmelites* to repeale a Patent of the King made in his prejudice, and of the Plaintiff *M.*17. *Ed.*3. *fol.*59. *Petition* 21.

A Writ ſhall not be maintained againſt a Prior without naming the Abbot, although he had a ſeverall poſſeſſion ——— ſo, although his Land were ſo given, that the Abbot ſhall not take the profits. 14. *H.*4. *fol.*10.

The Plaintiff ſhall not be diſabled, becauſe he is a Monk profeſſed in *Normandy*, 12 *H.*4.16.

Account by the Abbot and brethren was abated, the brother was named, 7. *R.*2. *Non hability*.3.

XI. *Where an Abbot or Pryor, or Biſhop, ſhall not alien by the aſſent of their Covent, and where they ſhall, and where the alienation ſhall be diſcontinued, without the aſſent of the Covent, and where the aſſent of parcell is not good.*

IF a Pryor, who is a Prebend of a Cathedrall Church, doth alien parcell of his Prebendary, by the aſſent of the Covent, yet this is not good without the aſſent alſo of the Biſhop and Chapter, nor *e contra, &c. P.* 17. *Ed* 3. *fol.*29 *Brief* 666.

An Abbot brought a Writ of *Terminum qui præteriit*, of that which was his right of his Church of *N.* appropriate to the Houſe, which he had as Abbot of a Leaſe of his Predeceſſor, and becauſe that the right which he hath thereto as Parſon of *N.* and for the Parſon there lieth no action but *Juris utrum*, the Writ was abated, *T.*20 *Ed.*3. *Juris utrum* 5.

The Biſhop of *Coventry* and *Lichfield* granted *Eſtovers*, with the Confirmation of the Pryor and Covent of *Coventry*, where he was alſo choſen, and to be choſen by them, and alſo by the Deane and Chapter of *Lichfield*, for which cauſe the Grant was held inſufficient without their aſſent, *Temp. K.* 2. *Grant* 104.

XII. *Whether a Biſhop, or other Spirituall perſon a diſſeiſor ſhall be ſaid to be ſeiſed to him and his Succeſſors, and where to him and his heires.*

HErle ſaith, where a Biſhop Leſſee for years, makes a Leaſe for life to a ſtranger, this is a diſſeſin to the Leſſor, and the Reverſion is in the Biſhop and his Succeſſors, H.7. *Ed.*3. *fol.*11. *Iſſue* 7.

By

By Uſurpation to a Church made by a Biſhop, the Patronage is gained to the See, *&c.* 47 *Ed.* 3. *fol.* 10. *Quare impedit* 141.

XIII. *Whether a Com-monk ſhall bring an action againſt the Abbot, or the Charter againſt the Deane, and a Monk ſhall be a perſon able to ſue for ſeverall poſſeſſions.*

NOte, The Chapter and every Prebend ſhall have an action by themſelves for every diſtinct right, and the Chapter againſt the Deane himſelfe; but if the Deane joyne with the Chapter to the preſentation of Church which is of the right of the Chapter, this ſhall be underſtood that he did it as Deane, and the Chapter ſhall not have a *Quare impedit* againſt another Deane of that Church, 9 *Ed.* 3. 18. *Writ* 460.

Monk as Farmer to the King, ſhall not have his action of Treſpaſs, but by *Quo minus* in the Exchequer, 2 H. 4. *fol.* 7. *Nonhab.* 18.

A Monk Leſſee of the King of Lands, the Pryor doth alien in time of warre. If the King grant the lands to another before this time, he ſhall have a *Scire fac.* to repeale this Patent (granted) but the King cannot enable a dead perſon to ſue and purchaſe, *per Hanc & Thirning, M.* 14. *H.* 4. *fol.* 10. *Non hab.* 21.

A Monk as Vicar of *D.* preſcribes to ſue and to be ſued, and this in a debt upon an obligation, 3 *H.* 6. *fol.* 23. *Non-hab.* 1. But it is cleere that ſuch Vicar ſhall be anſwered for all things concerning his Vicarage, otherwiſe not without his Soveraigne, for he is diſcharged of obedience, not of his profeſſion, 44 *Ed.* 3. *fol.* 4. *Non-had.* 23.

The Pryor of *W.* brought a *Quare impedit* againſt the Abbot of *W.* And although he were under his Obedience, *&c*, yet the action was maintained, for that he had his poſſeſſion ſeverall, and was Pryor by Election, and not removeable by the Abbot, yet it was agreed, that the frank Tenement of ſuch ſeverall poſſeſſion is in the Abbot, and a ſtranger ſhall have an aſſiſe or other action againſt him without naming the Abbot, *M.* 20 *Ed.* 3. *Nonhab.* 9. So 14 *H.* 4. *fol.* 10 *in Nonhab. diviſ.* 5. *cap.* 1.

XIV. *Where Biſhop, which ſhall be, ſhall be vouched.*

IN a Writ of Entry, the Tenant alledged againſt in Taile to his Father by one *M.* Biſhop of *R.* and that the See was void, and the Temporalities in the hands of the King and Archbiſhop, and voucheth him who ſhall be Biſhop, and it ſeemeth that he ſhall have the Voucher, although that no Summons ſhall be upon the poſſeſſion of the King: As Voucher of an

Infant in its Mothers belly, is good, yet if he hath no other heire, no proceſſe ſhall be awarded, *M.* 38 *Ed.* 3. *fol.* 29, *Vouch* 58. but ſee there, that the Tenant alledged that which T. was made Biſhop, but the Temporalties were not yet reſtored, for which cauſe the Voucher granted, and the Plea was ſtopped untill the King did declare his will, for the Summons ſhall not be but in the Demeſn Lands of the Biſhop, becauſe none other ſhall be rendred in value, 38 *Ed:* 3. 29.

XV. *Whether the Succeſſor of an Abbot or Pryor ſhall be charged for the offence and treſpaſſe of his Predeceſſor.*

WAſt againſt an Abbot as Guardian, the Abbot ſaid that his Predeceſſor was ſeiſed of the Ward and died, after whoſe death no Waſt was made. *Finch*, it is not reaſon that the Waſt of the Predeceſſor ſhould be unpuniſhed, yet the Plaintiff durſt not demur, but ſaid, that he had done Waſt after his death, *&c.* 43 *Ed.* 3 *fol:* 8. *Waſt* 78. *See* 49 *Ed:* 3 *fol:* 25. where the Succeſſor ſhall not be charged with ſuch Waſt.

Note, the Succeſſor of an Abbot ſhall not be puniſhed for the offence of his Predeceſſor for not ſcouring of a Ditch, unleſſe that the pain were aſſeſſed in his life-time *Per Curiam*, *M:* 8 H. 7 *fol:* 3. *Bar* 140. but the Succeſſor ſhall plead in excuſe of his own time, that the preſentment was not upon him.

XVI. *What perſon ſhall be ſaid to be Founder of an Abbey or Priory, and where he ſhall have the Temporalties during the vacancy.*

THe Pryor of *Plympton*, to prove the Biſhop of *Exeter* to be Patron, alledged a Charter of the Progenitor of the King to the Biſhop, that the Pryor and Covent might transfer and hold the Church of *Pl.* And by another Charter he granted two Hides of Land to the Cannons, whom the Biſhop of *Exeter* had there placed, *&c.* yet becauſe it did not appear expreſly that the Patronage was in the Biſhop before the Grant, nor expreſſed by the Grant; and it being alſo alledged that the Progenitors of the King had founded a Chappell there, before any Priory was there; and the firſt Grant is to transfer the Seculers into Regulers, the King was held to be the Patron, becauſe he was the firſt Founder: notwithſtanding that the Biſhops have been (as Patrons) from the time out of mind, and had had the Temporalties in the vacancy. It was alſo there ſaid, that although there was never there any Pryor before, and although that the Priory was not founded in the ſame place where the Chappell was, yet for that it

it was annexed to the Chappell, which was the firſt Patronage of the King, that the King ſhall be adjudged Patron, and ſo he was here, 38. *Aſſ. P.* 21. *Grant* 1.

The Patron of a Priory had a *Quare impedit* againſt the Sub-pryor and Covent in the vacancy of a Church annexed to a Priory, void in the vacancy, 9 *Ed.*3.*fol.*16. *Quare impedit* 30.

Note, the King ſhall be ſaid to be Patron when the firſt poſſeſſion of the Abbey is of his gift, or the greater part: And if he and others founded together, the King ſhall be preferred, *&c.* 44 *Ed.*3.*fol.* 24.

Note here, theſe ſaid Caſes make the King Patron, although the Abbey conſiſted in Land given by another, unleſſe it can expreſly be ſhewn that the houſe was of his foundation, and that be proved.

XVII. *Pryor Alien, and ſeiſure of his Lands by reaſon of the War.*

A *Formedon* againſt a Pryor alien, the Plea ſhall be put without day, the Land being ſeiſed for War, although demiſed to his Tenant, yet in an Annuity he ſhall anſwer, but not in an Aſſiſe of Rent, *T.* 13 *Ed.* 3. *Brit.* 264.

And the opinion was there, that the Free-hold was in the King by ſuch Seiſure; But *Shard* ſaid, there was no doubt but the Free-hold was not in the King, but that he had the Land in name of diſtreſs only, and alledged a Judgment, that ſuch Pryor Leſſee ſhall bear all manner of charges *H.*17. *Ed.*3 *fol.*2. *Scire fac.*7.

And 13 *H.*4.*fol.*13. *Hank* alledged a Judgment, wherin a Writ of Right againſt a Pryor alien, ſuch Farmor ſhall have aide of the King for the ancient grant of his Progenitor.

See more of this 46 *Ed:*3.*fol:* 6. Foraſmuch as the King had nothing but the poſſeſſion for the time, Pryor alien in a *Quare impedit* declared upon the preſentation of his Predeceſſor and of the King ſeiſed for the cauſe of War, and it was good. So the Preſentation of the King by ſuch Seiſin in right of the Pryor, is good. 40 *Ed:*3.*fol.*10. ***double Plea*** 72.

Pryor Alien charged for the Farm of the Pryor leaſed to him in the time of the War, had proceſſe againſt others, ſurmiſing that they had parcell of the Goods, &c. without which they had not wherwith to pay, 38 *Aſſ. P.* 20 *Juriſdiction* 32.

The King ſeiſeth for Lands of a Pryor Alien, the Lands of that Pryor who was born in *Gaſcony* within his alleageance, he ſhall have generall reſtitution, and by ſuch reſtitution an Advowſon paſſed without ſpecial words of Advowſon, becauſe the Seiſure was by wrong 27 *Aſſ: P.* 48. *Livery* 9 but otherwiſe it is in a Grant.

A Monk as Farmor to the King of a Mannor ſeiſed in the Kings hands by reaſon of war, alledged that the Plaint. in the replevin brought againſt him was

was Villain Regardant to the Mannor, and hereupon iſſue was joyned, *M.* 20 *Ed:*3. *Villain* 10. Where the Monk was a Com-monk of an Abbey in *Normandy.*

Ability and Non-hability.

I. *Where a Pryor donative and removable ſhall ſue and be ſued without his Soveraign.*

UPon a Writ brought by a Pryor, the Defendant ſaith, That the Plaintiff was a Monk profeſſed under &c. The Pryor ſaith, That he and his Predeceſſors have ſued and been ſued, and have anſwered, and have been anſwered time out of mind &c. and it was held a good Plea, and rehearſes divers ſuch Pryors, although they were removable at will *&c. M:* 12 *Ed.*4 *fol:*17. *Non-hability* 16 39 *Ed.*3. *fol:*24. *Non-hability* 22 agreeed, and the Pryor ſhall ſet forth the matter to enable him.

Land is given to an Abbot, Pryor, and Covent of W. Provided, that the Pryor and Covent ſhall take the Profits, and the Abbot ſhall not meddle therwith: This matter was pleaded upon a Writ of Aſſiſe of the Rent of this Land brought againſt the Abbot alone; and ſaid moreover, that the Pryor hath his poſſeſſion ſeverall from the Abbot, yet the Writ was adjudged good, and the Abbot alone ſhall anſwer 14 *H.*4. *fol:*10. *Non-hability* 21.

See there, that a Monk as Farmer to the King ſhall be anſwered for any thing touching his Farm, but the King cannot inable him to take the Freehold, *ibidem.*

Debt againſt an Abbot, and C. Com-monk, that he was Pryor donative of D. where he had to do, and ſuffered an eſcape &c, and the Writ abated for naming the Pryor; But for his Contract made before he entred into Religion, hē ſhall be named; 45 *Ed:*3. *fol:*9. *Non-hability* 25.

[Raviſhment of a Ward brought againſt the Pryoreſs of B. who ſaid, that every Pryoreſſe there is made by the Pryor of St. *John*, who is Commander there, and was to be obedient unto him, and removeable at his will; So the Writ ſhould be againſt the Pryor &c. and becauſe it was not, it abated; although that the Pryoreſs was impleaded, and impleadable time out of mind &c. and had a Covent and Common Seal, and their Poſſeſſions ſeverall &c. *P.* 12. *R.*2. *Non-ability* 4.

A *Scire facias* brought by the Pryor of H. upon a Recovery of his Predeceſſor

deceſſor had againſt the Predeceſſor of the defendant, Parſon of *C.* in an Annuity; the Parſon ſaid, that the Pryor is a Monk profeſſed, under the obedience of the Abbot of S. removeable, and praied Judgement, whether he ſhould anſwer, and compelled to anſwer thereto, notwithſtanding the admittance of his Predeceſſor. Alſo it ſeemeth the firſt recovery was well avoided by this plea: 34 *H.6.fol.* 2. *Scire fac.* 39.

A Fine of a Pryor Donative removeable and not impleadable, and which had not the Covent Seale, ſhall binde his Succeſſors for ever, 2 *Ri.* 3. *fol.* 5. *Eſtoppell* 82.

He ſhall not maintaine an action, becauſe that he is made Vicar of *D.* and out of obedience, for it is the profeſſion which diſables him, and not the obedience, but he ſhall ſay over, that the Vicars there have impleaded and been impleaded *&c.* 3. H. *6.fol:* 23. *Debt* 14. And ſee there, as to things ſpirituall, a Monk ſhall be enabled by his Soveraigne and Ordinary, but in things temporall not without the Pope *&c.*

The Pryor of *B.* brought an action of Treſpaſs againſt the Abbot of *C.* who ſaith, That the Plaintiffe is under his obedience *&c.* The Plaintiffe ſaith, that it is perpetuall, and hath a Covent and common Seale *&c.* and becauſe that the Plaintiffe is his Soveraigne, they were at iſſue if removeable *&c.* and this to be tried by the Biſhop, 2 *H.4.fol:* 24. *Triall* 35.

II. *Whether a Monk, or ſuch dead perſon ſhall be able to ſue in his name only by the Popes Bulls, without the aſſent of the King, or by the Patent of the King only.*

IN Treſpaſs by him that was a Monke profeſſed, he pleaded that the Pope by his Bulls had given him licence to take a Benefice *&c.* and alledged that he is Parſon of *D.* by reaſon of the Bulls; and it was adjudged that he ſhall be anſwered: but it was ſaid, that the defendant ſhall be received to ſay, that the ſuggeſtion of the Bulls was falſe, aud ſo the Bulls void, and he ſaid, that yet could not he purchaſe to him and his heirs: *&c. P.* 26. *H.6. Nonhability* 13.

A Monk Farmer of an Abby during the Warre, brought an action of Treſpaſs, and the Writ abated, becauſe he was not named Farmer in the Writ; alſo the opinion was, that the action did not lie here, but he ſhall have a *Quo minus* in the Exchequer for debt and Treſpaſs *&c.* 2. H. 4. *fol:* 7. *Nonhability* 18. and with this agrees, that he ſhall haue a *Quo minus*, 8 *H.5.fol:* 6. *Nonhability* 29. and 7 *Ed:* 4 *fol.* 28. and 14. H. 4. *fol:* 10. *Nonhab.* 21. *Screne* alledged a Judgement, where a Monk ſuch a Farmer, who had a *Scire fac.* againſt him, who had the later Patent from the King of the ſame Farme to repeale it: *Hunk*, it may well be, but the King cannot enable him to have the Freehold, nor to ſue for the Freehold, *Nonhability* 21.

III. *Whether*

III. *Whether a Monk and dead perſon being Vicar or Parſon ſhall ſue and be ſued alone without his Soveraigne.*

THe Vicar of *C.* brought an *Quare impedit* againſt *E.* and declared, that he made him a Grant to preſent to the Church of *H.* The defendant ſaid, that he is a Monk profeſſed *&c.* The Plaintiffe alledgeth, that he was preſented by the Pryor of *W.* who is Parſon and Patron — of the Church of *C.* and that the Vicars there have been perpetuall and not removeable, time out of mind *&c.* and have been impleaded, and have impleaded others *&c.* and that the Pryors of *W.* have made the Vicars of their Canons time out of mind *&c.* *Thorpe*, This action is not of a Church annexed to his Vicarage, by which he ſhall not be anſwered: And the Court ſaid, that he is diſcharged of his obedience, not of his profeſſion. *Finch*, it is cleer, that he ſhall have his Action for all things concerning his Vicarage, and which may be profitable to his Vicarage, and an Action for a term purchaſed by him: And this Preſentation is but a Chattell, by which if he had been made Biſhop, he ſhould not have had Action of a thing not touching his Biſhopprick without his Soveraign, and it was not adjournied *H:* 44 *Ed:* 3 *fol:* 4. *Non-hability* 23.

See 3 H:6. *fol:* 26. *Non-hability* 1. Where ſuch a Vicar had an Action of Debt upon an Obligation made after he was Vicar, with averment that he, &c. have ſued and been ſued by ſuch name time out of mind &c. and ſee there that the profeſſion is the only cauſe of *Non-hability*, *Debt* 14. And note there *Paſton* ſaid, that of things Spirituall, a Monk may be made an Abbot by his Soveraign and Ordinary without the Pope, but not of things temporall. *Martine*, this is a good diſtinction &c. 3 *H:*6. 23. *Debt* 14. ſee 39 *Ed:* 3 *fol:* 24. That ſuch a Monk ſhewed matter, proving him to be anſwerable.

IV. *Where an Abbot and Com. monk ſhall be ſued, or ſhall ſue joyntly.*

DEbt againſt an Abbot and Pryor donative. upon an eſcape of a man condemned in the Faire, abated for naming the Pryor, although that the Faire was to him, becauſe removable, 45 *Ed.* 3. *fol:* 9. *Non-hability* 25.

In an Aſſiſe of *Corody* againſt the Abbot of W. and the Pryor, the Pryor as Farmer to the King during the War, pleaded *Out of his Fee &c.* and the Writ was good 27 *Aſſ:* 43 *Aſſ:* 255.

In a Treſpaſs of battery of a Monk brought by him & his Abbot *Ad dam-*

num

num ipſorum: (1.) to their damage, and the Writ good *P.* 13. *Ed.* 3. Writ 261. *Strange* ſaid, that upon an Obligation made to a Monk before he entred into Religion, his Soueraigne and he ſhall have an action, which was denied 3 H.6. *fol.* 23. *Nonhability*. And ſee there, it ſhall not be an *Eſtoppell* to ſay that the Plaintiff was profeſt, becauſe he was bound to him by the name of Vicar &c.

V. *Where a Monk or Pryor ſhall have his action againſt his Soveraigne, and where not.*

THe Prior of *W.* brought a *Quare impedit* againſt the Abbot of *W.* and it was good, becauſe his poſſeſſion was ſeverall, had by election, and not removeable by the Abbot 20 *Ed.* 3. *Nonhability* 9. See Abbot *Diviſ.* 13. *cap.* 5. But ſee 14 H.4. *fol.* 10. *Nonhab.* 21. That yet he is to demand the land of the Pryor againſt the Abbot, for the Freehold belongs to him &c.

In Raviſhment of Ward againſt the Pryoreſs of *B.* ſhe alledged, That the Pryor of St. *Johns* is Commander of the Houſe, and that the Prioreſs is at all times made by him, and obedient unto him, and removeable at his will &c. and the Writ abated, although the Plaintiff alledged that the Pryoreſs uſed to make Leaſes for years, had a Convent and common Seale, and their poſſeſſion ſeverall &c. *P.* 12 *Ri.* 2. *Nonhab.* 4. And ſee 2 H.4. *fol.* 124. *Triall* 35. In Treſpaſs by a Pryor againſt an Abbot, under whom his obedience was. The Pryor alledged that he was perpetuall, had a Convent and Common Seale, Inſtitution, and Induction &c. And the iſſue was, whether he was removeable by the Abbot, and this tried by the Biſhop *Triall* 35. Of an action for a Chapter againſt a Deane: See Abbot *Diviſ.* 13. *cap* 1. 9 *Ed.* 3. 18. *Brief* 460.

V I. *Where* Nonhability *ſhall be by taking the habit of a Religious perſon, without profeſſion, and although profeſt ſhall bee avoided, and ſhall not bee diſabled, and at what age, and by what he ſhall be profeſſed.*

NOte, The Plaintiff ſhall never be diſabled becauſe the defendant alledgeth that he was profeſſed in *Normandy*, or any where elſe beyond the Seas where it cannot be tried 12 H.4. *fol.* 16. *Nonhab.* 2.

In an Aſſiſe by the husband and wife, the defendant ſaid, that ſhe had been a Nun thirty years &c. Now it was no plea for the husband, that ſhe had left the Order by precontract, unleſs he had alledged the Conttact be-

fore the taking of the Habite; for if ſhe were affianced to him after this, yet ſhe is a Nun by Barr, which *Herle* granted, although ſhe were never profeſſed in deed; yet if ſhe did abide in the Order a year and day, ſhe ſhall be held a Nun alwayes; upon which iſſue was taken, whether ſhe had left the Order before that ſhe took the Habit, and it was ſent to be tried to the Biſhop of the place *Tr.* 5 *Ed* 2. *Nonhab.* 29. But the habite of a Monk is not materiall, if he be profeſt in deed &c, *M.* 19. *Ed.* 2. *Brief* 840.

Note, That an Infant of twelue years may well be profeſt, and it is no plea, that he was not profeſt by the Ordinary, for he may be profeſt by his Deputy, *M.* 12 *Ri.* 3, *Gard.* 106.

VII. *Where the party ſhall alledge* Nonhability *of his own perſon, and how it ſhall be avoided, and where a Monk ſhall be ſued without his Soveraigne.*

IN Debt upon an Obligation, the defendant ſaid, that he was a Monk profeſſed &c. *Cl.* you are bound by name *Secular*, and you ſhall not diſable your ſelf. *Charl.* and *Rich.* Juſtices ſaid, You ſhall anſwer &c. *M.* 13 *Ri.* 2. *Nonhability* 5.

Precipe brought againſt the Warden of an Hoſpitall, who ſaith, That he is profeſt under the Pryor of *Coventry*, and removeable at his will; The Plaintiff offers to aver that he is a perſon *Secular*, and not profeſt. *Shard*, we have nothing to do with his Profeſſion, but anſwer to this which he ſaith, that he holds at will &c. *P.* 13 *Ed.* 3. *Nonhab.* 7.

In a *Quare impedit* againſt a Sub-pryor, he alledged that he was under obedience, and he could not have action, by which &c. *Hengh.* Juſtice, yet he may diſturbe, and againſt a Diſturber a Writ lieth, by which he ſhall anſwer *Tr.* 22 *Ed.* 1. *Nonhab.* 27,

See 12 *H.* 4. *fol* 17. The defendant pleaded Profeſſion in the plaintiff, he pleaded to enable himſelf in Aſſiſe, that at another time was brought againſt him by this defendant &c. *Eſtoppell* 104. See 34 *H.* 6. 42 *fol.* 2. of this.

In Treſpaſſe againſt two, If the one ſaith, he is a Monk profeſt, if this be true, the whole ſhall abate *M.* 19. *Ed* 2. *Writ* 840.

He which is Outlawed, ſhall not be put to anſwer to any action, although he be preſent at the Barr, no more then he ſhall be anſwered, 2 *Ed.* 4. *fol.* 1. *Render.* 54. *Stouf.* ſaid he ſhould be anſwered 15 *Ed.* 3, *Outlawry* 2. See there.

Where

VIII. *Where* Nonhability *of one of the Plaintiffs ſhall be of both, and where not, be it of the party Plaintiff or Defendant.*

UPon a *Cui invita* by two as heires, the defendant ſaid, that one is a Canon profeſt &c. and for this, neither the one nor the other ſhall be anſwered, becauſe they brought their action in Common 7 *H.4.fol.2. Nonhability.19.*

So in action of Treſpaſs brought by two, the one is challenged as Villaine, the defendant confeſſed it, the whole Writ abated 22. *Ed.3.fol.18. Nonhab.10.*

So in a *Quare impedit* againſt two, the one ſaith, That he is a Monk profeſt, and for this the whole ſhall abate 14 *H.4.fol.37.*

The ſame Law is in Treſpaſs againſt two, the one being a Monk 14 *H.4. fol.22.*and *M.19 Ed.2 Writ* 840.

So in debt againſt an Abbot and Pryor donative his Com-monk 45 *Ed. 3.fol.9.Nonhab.25.*

In an Aſſiſe by two husbands and their wives; the one husband and wife ſevered after apparance, the Tenant alledged the husband to be Alien born, yet the Writ was good *M.11.H.4.fol.26.Nonhab.20.*

Treſpaſs brought againſt two, The one ſaid, that the Plaintiff was his Villaine, and the other held himſelf to the ſame plea, whereby upon iſſue, if that he was free againſt them both *H.34.Ed.32.Nonhab.28.*

Taking of a husband by one Demandant after the *Darrein* continuance ſhall not abate the Writ, but for her part, becauſe the Writ was well purchaſed, otherwiſe it is if the Writ had never been good in the whole: by *Shard* 12 *Ed.3.Writ* 258. *Fitch.*See 32 *Ed.*3.after all abated.

Upon a Writ of account is brought by two, one is Outlawed, the Writ ſhall abate in all *T.9 Ed.3.fol.22.writ* 461.

Upon a *Dum fuit infra ætatem* by two Parteners, the Releaſe of the Anceſtor was pleaded, whereby the one being within age, the plea was ſtaied for all. And there *Finch* ſaid, if one be Outlawed or Excommunicated all ſhall abate; but if it be for Felony, the other ſhall be anſwered *T.* 30 *Ed.3.fol.7.Age* 82.See 41 *Ed.3.fol.7.*

In an action upon a Bond by a Monk and a Secular man, it ſeemeth all ſhall abate by joyning the Monk 3 *H.6.fol.23.Debt* 14.

IX. *Where* Nonhability *ſhall be alledged for cauſe of Villainage, or becauſe a Clerk Convict, or becauſe an Alien born.*

VIllainage in the Plaintiff is no plea in Conſpiracy brought for making void of the Record by which he was found a Villaine *P.* 42.*Ed.3.fol.* 14. *Conſpiracy* 10.

So if he who is at iſſue upon Non-villainage impriſon me, ſo that I cannot come at the day, and I am found a Villaine; this Triall ſhall not bind me in falſe impriſonment brought againſt him 44 *Ed.*3.*fol.*22.

In Treſpaſs for Battery in preſence of the King, and of his Juſtices, it ſhall be no plea for the defendant to ſay, that the Plaintiff is his Villaine for now it is not lawfull to apprehend him in preſence of the King 27 *Aſſiſe P.*49. *Villaine* 18. whereto agreeth 27 Ed.3.*fol* 83.

He that is delivered to the Ordinary as a Clerk convict, and in that time is Outlawed, he ſhall not aſſign Error in the Outlawry, before he have made his purgation; but let the Deane ſee the ſame well done *ſede vacante*, and in the abſence of the Deane and Chapter; & *T.*13. *Outlawry* 2. And ſee there, *Thorpe* ſaith, that being in the Biſhops Priſon, he ſhall be received to every ancient action, and ſhall be vouched, and his heire ſhall have the Writ of *Mort de Anceſtor* of his ſeiſin *Outlawry* 2. *Stouſe* ſaid, he ſhall not be anſwered againſt another, but if he ſhall anſwer, it is not material *ibidem.*

In a *Precipe*, the Tenant voucheth him that was in the Biſhops Priſon, as attaint of Felony; and although he may make his purgation &c. yet he ſhall not have the Voucher by the Opinion, becauſe he is now out of the Law, and the Court ſhall reſpect the time preſent, and now he cannot be be ſummoned, nor Execution had againſt him, as a man ſhall not vouch a man Outlawed, yet he may be reſtored to the Law, and 8 *Ed.*2. *Itin Canc. Voucher* 137.

A Merchant Stranger ſhall not ſue for his goods at the Common Law, but in the Chancery he may well by their Law; and he ſhall ſue a Denizen before the Councell; but a Denizen ſhall not ſue him there &c.13 *Ed.*4. *fol.*9. *Denizen* 2. and ſee there by what Statutes he ſhall be bounden.

X. *VVhere* Nonhability *by Outlawry ſhall be alledged, and how this* Nonhability *ſhall be avoided and defeated by plea or otherwiſe.*

IN Treſpaſs the Defendant ſaid that the Plaintiff is Outlawed at the ſuit of *D.* by the name of *I.S.* of *D.* The Plaintiff ſaith, that at the time *&c.* he was dwelling at *S.* without that *&c.* and this was held a good plea, becauſe it cannot be intended to be the ſame perſon 10 *Ed.*4 *fol.*13. *Nonhab.* 14. 38 *H.*6.*fol.*1. agreeth.

But where the Defendant alledgeth, that the Plaintiff was Outlawed at the ſuit of a ſtranger, as a Mainpernor, by the name of *I.S.* Gent. he ſhall not avoid this by ſaying, that he is a Yeoman, becauſe he appeared before; alſo here the addition is not needfull, wherefore he ſhall traverſe, that he is not the ſame perſon *&c. M.*10 *Ed.*4. *Nonhab.*15.

But he ſhall well avoid it by ſaying he is a Knight, being named Eſquire 38 *H.*6.*fol.*1.

In

In Debt the defendant pleads an outlawry of the plaintiff, by the name of *I. S.* Gent. The plaintiff ſaith, that there are two, *I. S. &c.* and that the elder is Outlawed, and that he is the yonger; it is no plea, but is put to his *Edentitate nominis*, for it is but delatory, and not in Barr 21 *Ed.* 4. *fol.* 15. *Nonhab.* 17. 13. *H.* 4. 12. *Action.*

He which was Outlawed, having his Charter of Pardon, was received againſt a Stranger before a *Scire fac.* ſued, for this is only to the party, *&c. M.* 44 *Ed.* 3. *fol.* 27. *Nonhab.* 24 See the contrary adjudged *Tr.* 20. *Ed.* 3. *Nonhab.* 8. and that he ſhall not be anſwered before a *Scire fac.* ſued againſt the party *&c.* and with this agreeth 21 *Ed.* 3. *fol.* 55. *Nonhability* 6.

In an Attaint upon a falſe Verdict in an Aſſiſe, where he was Outlawed for the damages there recovered, and now had his pardon, it ſhall be a good recovery, though he had not yet ſued a *Scire facias*, becauſe by this ſuit this recovery is amented, and all that depends thereon, 30. Book of *Aſſiſe*. *P.* 20. *Outlawry* 4.

An Aſſiſe brought by two, one of them being outlawed, he ſhall be ſevered; and the Aſſiſe ſhall ſtand for the other 11 *H. fol:* 25. 30 *Ed.* 3. *fol* 7.

He againſt whom execution was awarded upon a Recognizance, notwithſtanding the defeazance of an antidate delivered after the recognizance, brought a Writ of Error thereof, and it ſhall be received, notwithſtanding the Outlawry in the meane time alledging he having a pardon *&c.* and *Scire fac.* ſued *&c.* and the Judgement was reverſed 29. *Aſſiſe. Plea* 47. *Nonhab.* 11.

He that was Outlawed upon a *Capias* for a Fine upon diſſeiſen found to be by force, ſhall not have an Attaint before he hath his Pardon, but ſhall ſhall have a Writ of Error, becauſe it is to defeate the whole, and the Attaint but to the Verdict, and had aſſigned Error that he was impriſoned *&c.* 7 *H.* 6. *fol.* 44. *Error* 18. See accordingly, that the reverſall of the firſt Judgement ſhall alſo reverſe the Outlawry, and all that depends upon it, as the Judgement in the Rediſſeiſin in the new Writ of debt upon the recovery *&c.* But by outlug of the Execution by *Audita Querela* upon a late Releaſe the Outlawry againſt him upon the *Capias ad ſatisfaciendum*, upon the Execution, ſhall not be amented, for it doth not diſprove the former Judgement *&c.* 6 *Ed.* 4. *fol.* 9. *Mainpriſe* 30.

I conceive that he that ſueth Execution againſt me ſhall not diſable me depending the ſame, to bring an *Audita Querela* againſt him, becauſe I am outlawed *&c. H.* 29 *Ed.* 3. *fol.* 13. *Audita Querela* 37. As he which hath an Aſſiſe againſt me, ſhall not diſable me at the ſame time by Outlawry *&c.* 12 *H.* 4. *fol.* 17.

He that was Outlawed upon a *Capias ad ſatisfaciendum* upon a ſuggeſtion of a Releaſe of the Execution, ſhall have a *Scire facias* againſt the party, and then ſhall have Pardon, not before *H* 4. *Scire facias* 150.

Outlawry was avoided, for that the party was beyond the ſeas at that time, he was in the ſervice of the King, with a Certificate from the Captaine 2 *Ed.*4.*Rnd.* 54.

The defendant paſſed quite in an Appeale, by alledging that the plantiff was Outlawed in an action of Treſpaſs, without being arraigned at the ſuit of the King 17 *Aſſiſe, plea* 26. Outlawry avoided for this, that he was ſo pronounced after that he was delivered to the Ordinary as a Clerk convict 15 *Ed.*3. *Outlawry* 2. Outlawry is well pleaded againſt the plaintiff by the name by which he is knowne, although he now ſue by another name, *P.* 34.*Ed.*3 *Outlawry* 16. and he ſhall be put from his Identity of the name.

Admiralty.

I. *Where and in what place the juriſdiction of the Admiralty is to hold plea, and of what things.*

M. 10 Iac. *in* Co: B. *in* Greenway & Barkers caſe, *it was adjudged* 1. *That they may take the goods in execution, though upon the land.*

2. *That they may arreſt and take their bodies.*

3. *They may compel the party to enter a caution, which is not a Recognizance but a ſecurity by ſureties, called a Stipulation, wherein the Selves are bounden, and which extends to Executors and Adminiſtrators, the ſubſtance of which is* Reparatum habere, judicatum ſolvere, & de expenſis ſolvendis.

NOte, that the Statute reſtraines the power of the Court of the Admirall, that they cannot hold plea of a thing done within the body of the County, but doth not reſtraine the Execution of that Court to be ſerved in the Land; for it may be that the party hath nothing upon the ſea, and if he hath nothing they may well take his body within the Land, or where they ſhall finde him, and by the ſame reaſon they may do Execution of his goods which are on the land in any place; It is the Cuſtome of the Court, that if the defendant make default in an action againſt him there, that he ſhall be amerced according to the diſcretion of the Steward, and holden a good Cuſtome by the Court, in Treſpaſs *M.*19 *H.*6.*fol.*7. *Barr* 210.

A Robber upon the Sea was taken, and arraigned before the Juſtices, and hanged, being found guilty, 4 *Aſſiſe*, *Plea* 25. *Corone* 216.

Note, that the Coroner ſhall do his Office for the death done in the arme of the Sea, or great water, where a man may ſee from one ſide of the water to the other, ſo of other things there done, for the Countrey may have Conuſance of them, and the Admirall ſhall not meddle; ſo it ſeems of things done in the ſea, within the view &c. *An.*8 *Ed.*2. *Itin. Kanc. Corone* 399.

By

By the Statute of 13 *Ri.2.cap*,5. It is ordained, that he ſhall not meddle but only of things done upon the Sea, and this is confirmed by the Statute of 2 *Hen.4.cap.*11.-which alſo gives double damages to the party who is ſued againſt this Statute, and 10 *l.* to the King for a penalty, and the action for the party ſhall be grounded upon the Statute.

And by the Statute of 15 *Ri.2.cap.*3. he hath no Cognizance nor Juriſdiction of Contracts, wrong ariſing within the body of the County, nor of the wreck of Sea, nor of death and miſdemeanor done in the great Ships which are hovering in the great Rivers, under the point of the ſame Rivers neare the Sea, and no other place of the Rivers, *&c.*

In a *Replevin* of his Ship taken in the Coaſt of *Scarbrugh*, in the Sea, *&c.* And the Action well lyeth when the Defendant is come in by proceſs, for *Berr* ſayd: that the King will have his Peace kept as well in the Sea, as in the Land, *&c. Edw.* 1. *Avowry*, 192.

That every water that ebbs and flowes is an Arme of the Sea, and it is ſayd, That a man ſhall not looſe his Soyle which is ſurrounded by the ſudden encreaſe of the Sea, although he ſhall not have the water &c. 22. *Aſſiſe, plea* 93.

The Juriſdiction of the Court of Admiralty extends to things which are done only ſuper altũ mare; and all the Forts of England *are* infra corpus Comitatus, *and there it was adjudged* 30.H.6. *in* Hollands *caſe becauſe he held plea of a thing contrary, which was done* infra Poly de Hull, *he ſhall anſwer to the party damages* 2000 l. *Vid.* 5 Mar. Dier 160.

Action upon the caſe againſt one for ſuing one in the Court of Admiralty for a thing done infra corpus comitatus *and double damages for the Plaintiff.*

Admeaſurement of Paſture.

I. *The Count in Admeaſurement of paſture, the Writ and pleas to the Writ.*

IN Admeaſurement the Plaintiff declares, that where the defendant had Common in ſuch a place, by reaſon of his Tenure, he had put therein more beaſts then the defendant ought, the number, and the over-plus &c. The Declaration is good, and it is no plea that there is another who hath Common in the ſame place, who is not named in the Writ, for the action ſhal be only againſt him who did the wrong, and all ſhal be meaſured &c. 8 *H.6. fol.* 26. *Admeaſ.* 1.

Note, Regiſter 156. *Admeaſurement lieth for him who hath Common by ſpecialtie for a certaine number of beaſt, and ſhewed.*

In an admeaſurement, the Defendant ſayd, That pending the Writ the Plaintiff himſelfe had ejected him of his Common, *&c.* for which he had an Aſſiſe pending againſt him, *&c.* yet becauſe he was ſeiſed of the Tenement for which he had ſurcharged the paſture, he was put to anſwer, 8 *Ed.*2. *Admeaſ.* 14.

Admeaſurement was brought, for that whereas the Defendant had but one Oxegate of Land, he had ſurcharged *&c.* He pleaded a Grant from the Lord of Common for two hundred Sheep, Judgment, *&c.* and further allowed

allowed, beſides the Plaintiff had the eſtate of the Grantor, ſo he ſhall not be of better condition; the Plaintiff ſayd, that he was Lord of the whole Town before, and the Grantor but of the third part, *&c. Markham* Juſtice, We will enquire the truth, *&c. Vide Ed.* 1. *Admeaſurement* 15. That a man ſhall not have more Common then his Grantor hath, *Vide Edw.* 1. *Common* 24.

II. *Barr in Admeaſurement of Paſture.*

IN Admeaſurement, the Defendant ſayd, That *S.* is Lord of *F.* and was ſeiſed of the Land which the Plaintiff holdeth, and ſuppoſeth the Common appendant to him and his Anceſtors time out of mind, as parcell of the Demeſnes of the ſame Mannor, untill ſuch time, when as he Common in the Waſt of the ſayd Town was not appendant thereunto; that he did infeoff the Plaintiff and demands judgement. And the opinion was, That he could not claim Common appendant, becauſe it could not be appendant thereto in the hands of the Lord; although it were ancient Hyde Land, *&c.* when it had been in the hands of the Lord, time out of mind *&c.* But if ſuch Lands had eſcheated to the Lord, or to his Anceſtor, or come unto him as the Land of his Villain, and he grant it over, the Common ſhall revive to the Feoffee, (as it ſeemeth) And the Statute of *Merton* which is alledged, Common to Feoffees ſhall be intended only of Feoffments made before the time of memory, by *Shard.* who alledged the Statute of *Weſtm.* 2. cap. 46. That a man ſhall not have Title to Common by occupation, if it be not time out of mind, *&c. Tr.* 13. *Ed.* 3. *fol.* 30. *Admeaſurement*, 7.

Unity of Poſſeſſion of the one Land and the other in one hand, time out of mind, *&c.* ſeemes a good Barr in this Action; but if the Plaintiff can alledge the appendancy before the unity or poſſeſſion, the appendancy ſhall be revived by Feoffment of the Land, to whom, *&c.* as it ſeemeth by the opinion of *Hill* and *Wilby*, 20 *Edw.* 3. *Admeaſurement* 8. *P.* 11. *Edw.* 3. *Common* 11. *Contra.*

Vide Book Entries 12. In Admeaſurement, it is a good Plea, that he is Lord of the Town, *Prima Facie*, but with averment, that the Plaintiff holds not of him, the Action lyeth, although he be Lord of the place, *Ed.* 1. *Admeaſurement* 11. 32. *Ed.* 1. *Common* 29.

III. *Admeaſurement of Common abarred.*

IT ſeems a good Barr in this, That ſuch a cheif Lord, &c. granted Common to him for ſo many beaſts, &c. *Ed.* 1. *Admeaſurement* 16.

Admeaſuremen:

Admeaſurement lieth not for Common appendant to a Meaſe, and therefore *Parum* ſaid, that there cannot be ſuch appendancy, yet the iſſue was if it were appendant to the Meaſe 11. *Ed.* 3. *Common* 11.

IV. *How Admeaſurement of Paſture ſhall be made, and what ſhall be admeaſured, and againſt whom the action lieth, and who ſhall have it.*

Littleton ſaith, That in Admeaſurement of Paſture, the Sheriff ought to ſummon the parties into the County Court, and they may plead there, and when Judgement is given that there ſhall be Admeaſurement, it behoves him to make it, and the Plaintiff ſhall be admeaſured, and the returne ſhall be ſpeciall, that he hath admeaſured ſuch *&c.* which are all which ought to be admeaſured *&c.* *M.* 7 *Ed.* 4. *fol.* 22. *Admeaſure.* 2. And *Jenney* ſaid, that the Suitors are Judges, and not the Sheriff. *Nat. Br. Fitz* 215. *C.*

Admeaſurement lieth not againſt him that hath Common appurtenant, and alſo by eſpecialty without number, but well where it is of a certaine number, and there it behoves him to alledge the ſpecialty, and to diſcharge him thereby *&c.* or otherwiſe he ſhall loſe the advantage of the ſpecialty, if he ſay nothing thereof in pleading 22. *Aſſiſe. p.* 65. *Admeaſ.* 6. *Fitzh. Nat. br. fol.* 125. *D.*

A man ſhall never be admeaſured in his own proper ground, but where there be many Tenants, and one hath Common with another, the Freehold of every one ſhall be Admeaſured for the others Common, and the others ſoile for his Common *&c.* but where there are but two Tenants which have Common one in the others ſoil, there Admeaſurement lieth not, for it cannot be ſuppoſed that he hath ſurcharged his Common, for this Common is his own ſoile, who is ſaid to ſurcharge it by *Huſſey* and *Shard*, *Green* ſaid there, although upon the Admeaſurement all the Common be caſt into a certainty, yet the Judgment ſhall not extend but only between the parties to the Writ, and every Commoner who is g ieved afterwards may have a new Admeaſurement *&c.* 18. *Ed.* 3. *fol.* 30. *Admeaſurement* 7.

Admeaſurement lieth not between Lord and Tenant, but the Lord may approve, and the Tenant outed by him ſhall haue an Aſſiſe, but the next neighbour which holds not of him ſhall have Admeaſurement againſt the Lord of the Soil *Ed.* 1, *Admeaſ.* 11. & 32. *Ed.* 1. *Common* 29. *Fitz Nat. Br. f.* 125-*D.* that not againſt the Lord.

Yet the Lord may approve againſt ſuch neighbour by the Statute of *W.* 2 *cap.* 46.

The Plaintiff in this action ſhall be admeaſured as well as the defendant, if the Lord himſelf bring it not *Ed.* 1. *Admeaſ.* 12.

The Lord of part of a Town ſhall be admeaſured againſt the other Lord,

and his Grantee of the Common alſo by the other Lord who had purchaſed the part of this Lord who granted it *Ed.1. Admeaſurement* 16.

Scroope ſaid, that Admeaſurement ſhall be made according to the Freehold, and not according to the Cauſe; and if a Tenant hold the ſoyle of the Common, in common with the Lord, Admeaſurement ſhall lye againſt him *&c. P.*32. *Ed.*1. *Common* 29. And ſee there that Admeaſurement ſhall not be made by peices. But in this Writ the defendant ſhall well Barr the Admeaſurement of parcell, and of parcell thereof, by *Berry*, as where the Lord purchaſeth a Tenement in the Town now having regard thereof, he ſhall be admeaſured.

If a Tenant ſurcharge the Common, the Lord may not take the beaſts damage fezant before Admeaſurement made if ſuch Tenant hath Common appendant there, but he may approve *&c.* and ſo it ſeems, that after Admeſurement, the Lord may take them damage fezant for the ſurcharge *M.* 10 *Ed.*3. *fol.*56. *Common* 16.

Mombray ſaid, that none ſhall have this action whith had not Common appendant 18 *Ed.*3 *fol.*30 *Fitzh. fol.*125. *b.d.*

If a Tenant ſurcharge after Admeſurement made, although all be admeaſured, yet he who was not party to the action ſhall not have the *Second ſuperoneration*, but ſhall have a new Writ of Admeaſurement, by *Green* 18. *Ed.*3. *fol.*30.

Vid. Fitz. Nat. Brc. 12, 4. E. 3. 63. *acc.*

It lieth for him who hath not eſtate but for terme of life 5. *Ed.*3. *fol.*43.

V. *Where ſecond* Superoneration *lieth, and where not.*

I*Enny* ſaid, that a Writ *de ſecunda ſuperoneratione* ſhall not be ſaid to be Judiciall made in the Common Bench, but where the Admeaſurement was made *Coram Juſticiariis* and not by the Sheriffe; but if the Admeaſurement made by the Sheriffe be removed by Writ of falſe Judgement, and after the Judgement is affirmed here this Court ſhall award a ſecond *Superoneration*, becauſe the plea is before them *&c.* But *Danby* ſaid, if the matter become here, be it removed duly, or not duly, the ſecond *Superoneration* ſhall be awarded, and ſtand untill it be reverſed by Error &c. *M.*7 *Ed.*4. *fol.*22. *Admeaſurementt* 2. *Fitz. Nat. Br.*126.

New Admeaſurement lieth for him, who was not party to the firſt action being now grieved; ſo a ſecond *Superoneration* for the party alone to the Writ of *Admeaſurement* 18. *Ed.*3. *fol.*3. *Admeaſurement* 7. And ſuch Tenant in new Admeaſurement ſhal not render ſuch damages as the Statute of *W.* did give in the ſecond *Superoneration*, nor ſhall he forfeit his beaſts *Fitz. N. Br. fol.*126.

Common.

I. *Common appendant, and how it ſhall be uſed.*

NOte, If a man claime Common appendant, he ſhall ſay no more, but that he is ſeiſed of a Mannor *&c.* to which *&c.* and ſhall not preſcribe, for ſo it ſhall be intended that he claimes right of Common by preſcription, and not by reaſon of appendancy, by *Martin*, and the Court granted it *H.4, H.6. fol.*22. *Common* 3.45. *Ed.*3 *fol.*13. *Common* 1.

Note by Hales *and* Fitz. 26 H.8.4. *Common appendant is by preſcription, and if common right cannot begin at his day, contrary of common appendant.* 21 H 7. 35. 4 H 6.13. 22. H.6.10. *to alledge it to be by preſcription will make the plea double, and it belongs only to arable land.* 26 H.8.4. 37 H.6. 34. *and it is for ſo many Tenants as can manure the land only*

A man alſo ſhall not uſe this with his own beaſts, other then thoſe which litter and dung it, as Horſes, Oxen, Kine, and Sheepe, and not with other. By *Priſot* and *Moile*; and *Priſot* ſaid, that a man ſhall not preſcribe to have Common appertaining for all beaſts. Alſo they ſay, that a man may preſcribe to have Common appurtenent for certain times, and upon condition; as for example, ſo long as they ſhall be dwelling upon ſuch Lands, or untill his land be ſowed &c. 37 *H.6. fol.*34. *Common* 7.

Note by *Newton* cleerly, that he which claims Common appendant, ought to claim it *Ratione Meſſuagii*, otherwiſe it is not good, and the iſſue was taken accordingly 22 *H:6.fol:*43. *Common* 4. *vide P:*11 *Ed:*3. *Common* 12. where challenge was made becauſe he claimed Common appendant to a Meaſe which could not be admeaſured, and yet admitted good.

A man may well uſe Common in the Waſt of G. appendant to his Meaſe and Lands in C. with Beaſts couchant and levant there, although that they did work from day to day at his Plow in B. where the Towns did not enter-common *&c. M:*10 *Ed:*3. *fol.*56. *Common* 16.

Vid. 40 E. 3. *in a Replevin a man preſcribed to have Common appendant for all manner of beaſts.*

Thorpe, *Baſſet*, and *Banck* ſaid, if a man had uſed at all times a Common with his Beaſts couchant and levant in one certain place time out of mind &c. that this Common ſhall in Law be adjudged appendant; and he ſhall not have it as in groſſe, if he cannot prove that he claimed it at all times among the Commoners as in groſſe *&c.* 22 *Aſſiſe:Pl:* 36. *Common* 19. *&c.*

Vid. Next before.

Note, *per Choke* and *Danby*, a man may have Common in a Piſchery appendant to his Free-hold, as well as Common of Paſture 4 *Ed:* 4. 29. *Common* 8.

In a Replevin of Beaſts, the Defendant avowes the taking in his approvement of Waſt, leaving ſufficient &c. And note, that the ſufficiency ſhall be according to the quantity of the Land of the Plaintiff, to which

&c. And he ſhall not have Common appendant to the Land newly approved: alſo it ſhall be according to the quantity of his Land in another Town where the Towns enter-common *&c.* 16 *Ed*:3. *Common* 9.10 *Ed*: 2. *Common* 22.

The Lord ſhall have Action of Treſpaſs as againſt a Commoner, that ſhall break his approvement for Common appendant, where had ſufficient left, and that ſhall come id iſſue in the Action 10 *Ed*: 3. *fol*: 15. *Common* 15.

If a man be diſſeiſed of his Common appendant, and alieneth the Land, and taketh back an Eſtate &c. he ſhall not have an Aſſiſe of Common by *Wilby*, which was granted, becauſe now he hath the Land to which &c. by a later Purchaſe: Alſo it is agreed there, if a man purchaſe the Land in which &c. that yet this Common ſhall revive by ſeverance of the Land back again, as by Alienation &c. and yet it was extinct: *Scot*, this is for the Vicinage where others Common there. Alſo, when all was in one hand, he ſhall uſe this as Paſture, though not as appendant 4 *Ed*: 3. *fol*: 45. *Com.* 17. Yet ſee *P*: 11 *Ed*: 3. *Common* 11. Iſſue was taken, if both the Lands were in one hand &c. and ſo the appendancy extinct, notwithſtanding the ſeverance afterwards 14 *Aſſ*: *P*: 21. the Aſſiſe awarded notwithſtanding the unity of poſſeſſion was pleaded, Common 18. *vide* of Extinguiſhment 11 *H*: 4. *fol*: 5. 14 *H*. 4. *fol*: 6.

Uſurpation ſhall not gain Title to Common, unleſſe he have had poſſeſſion time out of mind 10 *Ed*: 2. *Common* 22.

The Statute which gives Common appendant to the Feoffee of the Lord is to be underſtood of Feoffments made before the time, whereof the memory of man &c. not after 18 *Ed*. 3. *fol*. 30. *Admeaſ*. 7. See there, and ſee 17. *Ed*. 2. *Common* 23.

26 E. Co. 1. B. *adjudged accordingly of Common incertain. but ſhe ſhall have allowance for it.*

A woman ſhall not have Dower of Eſtovers appendant not certaine; in like manner if they deſcend to many heires, one only ſhall have them, and the others allowance from him &c. *M*: 2. *Ed*. 2. *Dower* 123:

In an Aſſiſe againſt the Lord who ſurcharged the Land, ſo that the Tenant cannot have ſufficient, as well as if he had approved more then he ought by *Berr*. 32. *Ed*. 1. *Common* 29.

Ald. ſaid, that the Lord ſhall never avow the taking damage feaſant of beaſts Couchant and Levant upon the Freehold to which a man hath Common appendant for the ſurchage, before Admeaſurement be made 10 *Ed*, 3. *fol*. 56.

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11. *Common appurtenant, and how it ſhall be uſed.*

9 E. 43. 14 H. 66. 4 H. 6. 13: *and this Common may be made in groſs by* 5 H. 7. 7.

NOte, If a man preſcribe to have Common by reaſon of his Land for all manner of beaſts, this ſhall be ſaid to be Common appurtenant, and not appendant *Vt ſupra* 37. *H*. 6. *fol*. 34: *Common* 7.

A man Grants to *T.* a Meaſe and Land *cum communia in moris & bruerijs*, this is common appurtenant according to the quantity of the Land *per l'Opinion*, and it ſeemes by *Hill* that he ſhall have Common in *Turbary*: alſo, if there be ſuch uſage there *&c.* 15. *Aſſiſe P.* 5. *Common* 13. *&c. vide* 15. *Bien* 15. *Ed.* 3. *Aſſiſe* 3. and there that an eſpeciall Grant of Common, and no Town limited is void.

Treſpaſs of Trees carried away by the Biſhop, the Defendant as Tenant to the ſame Biſhop in *B.* juſtifies the taking by preſcription for ſuch of the Tenants which firſt came, as of the boughs of the Trees blown down by the wind, or cut down by the Biſhop and which he and his Anceſtors &c. as terr-tenants have uſed as Common appendant to the meaſe of *B.* &c. and it was a good juſtification, but it ſeems, that this is a profit appurtenant, as he which preſcribes to have common of Turbary to dig, and ſell at his pleaſure, this is appurtenant by *Wilby* &c. *T.* 14. *Ed.* 3. *Barr.* 277.

A man grants *quandam aſſertam terræ cum communia turbariæ quantum pertinet ad duas bovatas terræ in* T. this is appurtenant, becauſe newly granted, alſo *Herle* ſaid, that Turbary cannot be appendant unto Land, 7 *Ed.* 3. *fol.* 43. *Aſſiſe* 134.

Common appurtenant may be well uſed in the night, 5 *Ed.* 3. *fol.* 41.

If I be enfeoffed of Land, by reaſon of which I ought to have Common, and I alien to another the Land, who uſeth not the Common, but ſells it over, his alienee ſhall never have the Common, *Ed.* 1. *Common* 24.

A man grants *quandam aſſertam terræ cum communia turbariæ, quantum pertinet ad duas bovatas terræ*, yet this is in groſſe not appurtenant, becauſe Turbary cannot be appurtenant to Land by *Herle*, 7 *Ed.* 3. *fol.* 43. *Aſſiſe* 134. ſee before Section 4. *& quare.*

III. *Common in groſſe, and how it ſhall be uſed.*

BY grant of Common, whereſoever, the beaſts of the grantor have gone, the Grantee ſhall have in the place where &c. although that afterwards it ſhall come to paſſe that the grantor had no beaſts, otherwiſe it is of Commor, whenſoever, for there it behoves at all times, that the grantors beaſts firſt were in &c. *Quære* of ſuch grant in Fee whenſoever, &c. 9 *H* 6. *fol.* 56. *Common* 2.

Note that he which hath Common in groſſe by preſcription, as he and his Anceſtors &c. without number, ſhall uſe it with what beaſts he will, and may well agiſt beaſts to be there, by *Bab. Martin* and *Paſton*, ſo of Common for 20 beaſts granted to me, if it be not expreſſed of mine own, as alſo if one preſcribe to have Common for his own beaſts, he cannot put in others, by *Martin* 11 *H.* 6. *Common* 3.

If

If a man grant me Common for my life for ten beasts by the yeare, or ten Cores of Wood by the year &c. And I do not take this profit for two or three years, I cannot by this take so much more the next years which follow, for this is a thing annexed to the Land, and I shall have remedy by Writ of annuity *per Curiam T.27 H.6.fol.10.Common 6.*

A man grants Common of Pasture to *R. in Pasturis suis* to go with his beasts; and the Opinion seemed that he shall have Common according to that which he hath used after the Grant, without alledging that the beasts of the Grantor went there *Hill 11 Ed. 3. Common.10.*

A man grants Common by Deed, which he willeth to be *infra metas & bondas* of the Common of such a Town, the Jury found in an Assise that the Grantor held all his Lands in this Village in severall, and that the Grantee was seised &c. and it seemes recovered upon the matter. But if the Grantor had a place in the Town which was Common, and another which was severall upon such Grant, the Common only shall be charged by *Hill.14. Assise.P.22.Common 12.*

When a man Grants Land, and a Mease with Common, this shall be taken to be Common appurtenant, and not in gross &c.15. *Ass. P.5. Common.13.*

In an Assise of Common claimed by prescription in gross, and found that the Plaintiff &c. at all times had used the Common not with their Beasts Couchant in any certaine place, but with beasts of their Granges, and with their beasts driven to Faires &c.whereupon he recovered: Here agreeth 22. *Assise.P.36. Common 19. vid. Division 1.cap.7.* that usage made such Common to be appendant.

A man Grants eighteen acres of Land, parcell of his Land in *B. similiter cum communia pasturæ in omnibus terris suis*, the Common shall be understood of all Lands in the same Town, and intends Common without number, and the Grantee in an Assise made title, that after he granted the Common to *I.P.* who was seised, and regranted unto him, and he was seised untill *&c.* all found accordingly. But that *I.P.* was not at any time seised by the Grant, nor put in beasts, nor had any beasts to put in, yet the plaintiff recovered by Award, because the Common is in him by the Grant without Livery of any man; as Grantee of an Avowson may well grant it before he hath presented, and the Grantee shall have a *Quare impedit* at the next avoidance *&c. 36.lib. Assise.P.3. Common 20. Vide Common 24. Ed.1.*

Note, Common, Way, nor Estovers appendant, cannot be made in gross, nor severed as Common appurtenant, Villaine regardant, and Advowson appendant may 5 *H.7.fol.7.*

By Grant of House-boote and Hey-boote, the Grantee shall have nothing for new building *Ed.1.Common 28.*

IV. *Common for cauſe of vicinage, and how it ſhall be uſed.*

NOte, that by the opinion of many, that no Lord ſhall claim Common by reaſon of vicinage, but onely ſuch Lord as is ſeiſed of the Town in poſſeſſion, and he ſhall have common for him, and his freeholders and his free tenants, and lies for term of years, 22 *Hen. 6. fol.* 51: *Common* 5.

Common by vicinage, is by preſcription, and the Lord approving ſhall leave ſuch Commoners ſufficient Common, according to the quantity of their Land, 16 *Ed.* 3. *Common* 9. *W.*2 *cap.* 46.

Beaſts working in one Town, may well Common in another Town, which do not enter-common, by reaſon of the meaſe and Land in that Town, and their lying there *&c.* 10. *Ed.*3. *fo.*16. *Common* 16.

If he which hath Common appendant purchaſe the Land in which *&c.* and afterwards the Lands are ſevered by alienation *&c.* the Common is remiſed, and is now by reaſon of vicinage, 4 *Ed.*3. *fol.*45. *Common* 17.

So if a man ſeiſed of 20 acres of Land arable, enfeoff me of parcell thereof, I ſhall have Common in the reſt, and this for cauſe of vicinage, 17 *Ed.*2. *Common* 23.

Choke held clearly, that preſcription to have common by vicinage, could not be laid in inhabitants, which are not a corporation, but in the Lord for them, yet it ſeems by *Danby* and *Littleton*, they ſhall preſcribe in the uſage well enough, 7 *Ed.*4 *fol.* 24. 8 *Ed.* 4. *fol.* 43. *Preſcription* 16.

V. *Approvement.*

IN an Aſſiſe of Common in an Acre of Land *&c.* the Defendant alledged that the Acre was but a Rood, and that had an ancient meaſe, and the Rood adjoyning, and becauſe his Meaſe was not ſufficient for his neceſſaries according to his eſtate, he did build upon parcell of the ſaid Rood to charge his houſe, and of parcell made a Curtilage, and ſhewed how much of every thing *&c.* and he ſhall not be compelled to take iſſue, whether the houſe was ſufficient for his Freehold before, but the Statute ſhall be underſtood, that he ſhall amend it according to his Eſtate to be ſufficient for his dwelling *&c.* by *Green* 32 *Ed.* 3. and 32 *Aſſ. P.* 5. *Common* 14.

Vide the Statute *Anno* 3. *Ed.*6. *cap.* 3. *Approvements* 3. That a man may well approve in his Land or Waſt to make a houſe and Land adjoyning to the quantity of three Acres, or to make Gardens or Ponds, to the quantity of two Acres, notwithſtanding Common claimed there *&c.*

VI. *Common.*

VI. *Common.*

IN Treſpaſſe by the Lord for caſting down a ditch, the other juſtifieth for the uſing of his Common appendant, the Plaintiff ſaith, that he as Lord approved it and left ſufficient, and the other was compelled to anſwer thereto in this Action, although the Statute ſpeaks, *inquir. veritatem per aſs. &c.* 10. *Ed.* 3. *fol.* 15. *Common* 15.

Note, that a man for his Common appendant may break down the hedge made upon the ſame Land, whereof *&c.* but if the hedge which incloſeth it be made upon other Land in which he hath not Common, he cannot break it, but a parcell thereof to have a neceſſary way *&c.* 16. H. 7. *fol.* 10. *Common* 36.

The Lord cannot take the beaſt of him who hath common appendant, dammage feaſant, before admeaſurement made, but he may approve againſt him *&c.* which was granted, 10 *Ed.* 3. *fol.* 56. *Common* 16.

Note *per Curiam*, if a man grant me Land and Common *&c.* he cannot approve contrary to his deed, in the waſt whereof the Common *&c.* H. 3. *Ed.* 2. *Common* 21. 31 *Ed.* 1. *Common* 27. 12 *Hen.* 3. *Common* 25.

If the Lord will make a Dike for approvement, and the Commoners diſturb him, it is a diſſeiſin. Likewiſe approvement is well made by this which he after the gaining ſuch parcell to himſelf, without the encloſing with hedge or ditch *&c.* 32 *Ed.* 1. *Common* 27.

If the Lord ſell all his Land in the Town, ſaving his Seigniory, yet he may approve upon the waſt, and ſhall have the agiſtment there, it ſeems not, if he alien all his Land with the appurtenants *per How* Juſtice, 32 *Ed.* 1. *Common* 29. and ſee there that an aſſiſe lieth againſt him if he ſhall ſurcharge, as well as if he approved more then he ought *per Berr.*

He that approves of the waſt ought alwayes to leave ſufficient Common to the Tenants and neighbours, 17 *E.* 2 *Com.* 23. *&* 6 *H.* 3. *Com.* 26. 16 *E.* 3. *Common* 9. and by the Statutes of *Morton cap.* 4. *and W.* 2. *cap.* 46.

An Aſſiſe lyeth of a lawfull approvement, as to the ſufficiency of paſture, if he have not a ready way to the Common, or from the Common to the water for his beaſts, 11 *H.* 4. 25. In like manner, he that grants to me Common for a certain number of beaſts, every where in ſuch a forreſt *&c.* now he cannot approve in any part of the forreſt without my aſſent, although he leave me ſufficient, and more, and if he doth, an aſſiſe lieth, *Anno* 12 *Hen.* 3. *Common* 25.

Note, if the Lord alien parcell of the waſt, this is approvement, and the Feoffeee ſhall hold this in ſeverall againſt the Commoners by *Stene* & *Mutf.* but *Scrope* and *Berr.* ſaid, that ſuch approvement was at the Common Law, and this not the approvement which the Statute giveth, by which the Commoners ſhall not by ſuch alienation and encloſure of the Feoffee be outed from their Common there &c. 16. *Ed* 2. *Warr. Charters* 31.

If

If a man hath Common appurtenant in three Townes, the Lord of one of the Towns may well approve, leaving him ſufficient &c. and this is underſtood having regard to the Common which he hath left in all the three Towns, having regard to the quantity of his Freehold, to which &c. by *Herle Anno* 4. *Ed.* 3. *It. D. Aſſiſe* 178. So ſo that Lord who firſt approves prejudiceth not the others, becauſe it is a great miſchief that none of the Lords ſhould approve &c.

If a Lord plow the Land, ſo that the Commoner cannot have his Common, he ſhall have an aſſiſe: ſo if he in whoſe woods I have common of Eſtovers, cut down all the wood &c. by *Markham* and *Rickhill*, there I ſhall have a *Quo minus. Hanck*, this is true, and this *Quo minus* is an Aſſiſe, *M*2. *H*.4. *fol*.11. Action upon the Caſe 24.

Approvement for the Tenant againſt the chief Lord, 18 *Ed*. 3 43. *vide Aſſiſe diviſ*. 17. *cap*. 3. a good caſe.

Way.

To whom the ſoil of the Common way belongs, and who ſhall have the Trees and other Profits growing therein

NOte by the Juſtices, that in the Kings high way the King hath nothing but paſſage for him and his people, but the Freehold, and all the Profits, as Trees &c. continue to the Lord of the ſoil, *M*. 8 *d* 4 *fol*. 9. *Way* 1. 2 *Ed*. 4. 9 *Treſpaſs* 95 agreed by *Littleton* and *Danby*, and hereto agreeth 6 *Ed* 3 *fol*. 23. and there note alſo, if the King be bound to make a bridge to travell over my water, the ſoil is mine, and the fiſhing in the water, and the way belongs to the King &c.

2 *E* 4. 9. Purpreſture or *Nuſans upon the way ſhall be puniſhed in the Leet.* 8 *H* 7 5. b. *acc.* 17 *E*. 3. *Br. Chymin* 11. *that the intereſt in the ſoil of a high way is in the Lord of the Manor, and he may diſtrain in ſuch a high way*

And if Nuſance be made in the high way by digging &c. the King ought to cauſe the puniſhment for the Nuſans, and the Lord ſhall have his action for digging his Land, by *atesby*, which *Needham* granted, and he which juſtifieth the taking in ſuch way, it behoveshim to ſet down, that it is the Kings high way, and ſo hath been time out of mind &c. *M*. 8 *Ed*. 4. *fol*. 9. *Way* 1. *vide* 2 *Ed*. 4. *fol*. 9.

27 *H*. 8. 27. *acc. but ſee there by* Fitzh. *If a man make a Ditch croſſe the high way, and I and my horſe riding in the night fall into the ditch and am hurt, I ſhall have an Action upon the Caſe againſt him who made the ditch, although it be in the Kings high way.*

II. *Difference between the Kings high Way, and the Common Way.*

ALD' Juſtice ſaid, that there is a way to a Town, which is a Common way, and not the Kings high way. *Parn.* I hold all wayes to be the Kings wayes, but Common wayes I hold thoſe, which ſerve the people of Towns to go in their own fields, &c. 6 *Ed.* 3. *fol.* 23. *Way* 2.

III. *What the Lord of the ſoil may do in the high way.*

NOte, that the Lord may not do any thing in the high way which may impair it, or ſhall be Nuſans to the Paſſengers, but he may cut down hills to make it even, or make any other profit, which is no Nuſans &c 32 *Ed.* 3. *Barr* 261.

IV. *Where a water ſhall be a high way, and that after the courſe changed.*

NOte *Thorp* ſaid, if a water were a high way, which water iſſued by the ſoil of another Lord, and for one cauſe or other the water changed his courſe upon the other ſoil, yet a man ſhall have an highway there, as before, as he had before in the ancient courſe, ſo that the Lord cannot hinder his courſe made anew, and ſaith, that Sr. *W Herle* adjudged this in the *Eyer* of *Nottingham* 22 *Aſs. P.* 93. *Barr.* 302.

V. *When and how a way ſhall be extinct and determined, and where it ſhall be granted without deed.*

EVery way dependant is extinct by Unity of poſſeſſion, 11 *H.* 4. *fol* 5. Yet it is held, if I uſe a way for my Mannor between two acres, and alien all but them, the alienee ſhall have the way, but if I alien thoſe two acres onely, I ſhall not have the way by them, *per Hill* 20. *Ed.* 3. *Admeaſurement* 8.

3 *H.* 6. 31. *In Treſpaſs the Defendant juſtified for a way appurtenant to his houſe in D. by Preſcription to go to 8 acres of wood in C. the Plaintiff ſaid, that ſince time of memory, I. N. was ſeiſed of the Land wherein the Defendant did claim the way and of the Wood, and the opinion was, that the way was extinct by the unity of poſſeſſion.*

In a partition of a Mill and a Meadow, the way over the Meadow was allotted to him that had the Mill, and it was good without Deed, and he ſhall have it as long as he hath the Mill, and an Aſſiſe thereof lyeth, yet of a Way in groſſe which is granted to a Freehold, no Aſſiſe will lye, although that the Grantee purchaſe the Land afterwards, to which he muſt go by this way, 21 *Ed.* 3. *fol.* 2. *Nuſans* 2. That Nuſans lyeth not of a way in groſſe, 11 *H.* 4. *fol.* 25.

H. 23. *Eliz.* in *Com.* B. *that by the Partition the way was revived which was ſuſpended by unity of poſſeſſion before. Note, where a man juſtifies by reaſon of a way he ought to ſhew the certainty, viz. that he ought to have a way from ſuch a place to ſuch a place, as from his houſe to ſuch a Cloſe, or to the Church, & he ought to ſet forth the quantity of the way, viz. ſo many feet, if he make title to the ſoil,* 39 H. 6. 6. *See Book Entries, he ought to claim certainty to go, carry, and recarry, and muſt ſhew from what time, and to what Freehold it is appendant. Yet ſee* 11 H. 4. 82. *the Defendant preſcribed in a way over a bridge in* B. *to his Manner in* S. *to carry victualls and neceſſaries over the bridge, and did not ſhew to what place, and yet holden good by* Hanckford, vid. 30 H. 6, 7. *and* 8: Vid. 20 *Aſſiſ.* 8. *A man ſhall not have an Aſſiſe of a way, unleſſe it be appendant, and for a way in groſſe no aſſiſe of Nuſance lies, but an action upon the caſe,* 34 *Aſſiſ.* 13.

VI. *Way by Preſcription, and remedy for the impayrement thereof.*

ACtion of the caſe againſt him who had plowed his Land over that which the Plaintiff, &c. time out of mind &c. had a way to ſuch a Meadow, &c. and iſſue joyned upon title of preſcription, and found for the Plaintiff: And at laſt the Writ abated by award, becauſe he ought not to have this Action, but an Aſſiſe of Nuſans, yet had he the poſſeſſion of the Way, but not ſo ready, &c. 2 *H.* 4. 11. Action upon the caſe 24. as upon the courſe of the water turned in part, ſo that the Mill could not grind ſo much, &c. An Aſſiſe lyeth, by *Marckham* there.

VII. *Where a Way ſhall be appendant to a Mannor, or Houſe,* &c. *or by reaſon of Tenure.*

ACtion upon the caſe for raiſing a wall whereby he could not have his way which he ought to have, *Ad eccleſiam ratione tenuræ ſuæ*, &c. and the Writ good, which ſaid *Ratione tenuræ*: although he had it but for years, Note there, This Action lyeth where the way is ſtraightned, but where the whole is ſtopped, the Aſſiſe lyeth by the terr-Tenant, but if this be done by a Stranger, an Action upon the caſe lyeth: And in the Aſſiſe it is neceſſary to name all the terr-Tenants although but one had ſtopped it, &c. 33 *H.*

A man ſhall not have a quod permittat *of a way, if it be not claimed to ſome Freehold, or if not claimed from ſome Freehold to the high ſtreet or Church, by* Finchden 45 *E.* 3. 8. vid. 30. H 6. 8. 39 H. 6. 6. 6. *fol.* 26.

6. fol. 26. Action on the caſe, 13. And ſo it was adjudged *M.* 28. and 29 *Eliz.* in the Kings Bench in *Giles* Caſe, ſo it was adjudged in the ſame yeare in the Lady *Greſhams* Caſe, for ſtraightning of a Way in *Oſterly* Parke.

In an Action of the caſe againſt a Prior, for not repayring a Bridge which he ought to make by reaſon of his Mill, and which he and his Predeceſſors have made time out of mind, by which Bridge, the Plaintiff and thoſe whoſe Eſtate he hath time out of mind, &c. by reaſon of his Mannor of *S.* &c. uſed to paſſe with Victualls, &c. It was a good Title to the way without clayming it to any certain Free-hold; but preſcription is Title enough to paſs a Bridge, and then where he pleaſeth, *Tr.* 11 *H.* 4. *fol.* 82 Action on the caſe, 30,

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VIII. *What perſon ſhall be compelled to make a Way or a Bridge.*

VPon a Commiſſion to enquire who ought to cleanſe ſuch a Brook, it was preſented, that it had not been cleanſed time out minde, and that no man ought to cleanſe the ſame; and moreover that the Abbot of *D.* had the Lordſhip over ſome part thereof, and the Earle of *H.* the Lordſhip of the other part, and that they had the Fiſhing there, and that four Townſhips, *viz.* *&c.* had their paſſage in the ſame River, and thereupon the Opinion was that it ſhould be cleanſed by the Townſhips, and the Lords in Common, and if the Townſhips had not the Paſſage, the Lords alone ſhould do it for their profit of Fiſhing *&c.* 37 *Aſſi. P.* 10. *Barr.* 305.

The water that runs between two Lordſhips, is only to him in whoſe Lordſhip the Spring is, and ſo ſhall continue, although that by long continuance it be driven in ſome places all into the Soyle of the other Lord, and his Soyle increaſe; but if ſuch increaſe of the water be by ſodaine floud and violenceof water, the other Lord ſhall not loſe his Soyle thereby 22 *Aſſiſ. P.* 93. *Barr.* 302.

Note, That he who hath made a Bridge of Almes time out of mind &c. ſhall alſo be bound thereby, as if he had been charged therewith by reaſon of his Land *&c.* 44 *Ed.* 3. *fol.* 31. *Barr.* 203.

Vid. 41. *Ed.* 3. 17. *acc.* He that is charged to cleanſe a Dike by preſentment ſhall anſwer afterwards to the continuance of cleanſing it at all times after the preſentment; and an Abbot ſhall anſwer for his own time, where the Preſentment was in the time of his predeceſſor 5. *H.* 7. *fol.* 3. *Barr* 140.

Note, it is held if a man have land joyning to the Kings high Way, that he is bound to cleanſe the Dikes without any preſcription, but if other land lye between the Way and his Land, there it ought to be bound by preſcription *&c.* 8 *H.* 7 *fol.* 5. *Barr.* 158.

It

It was preſented that the Abbot of *C.* ought to repaire ſuch a Bridge, he for his diſcharge alledgeth another preſentment before, which was, that he ought not to repaire but two Arches of the Bridge, *Et pontem ultra curſum aquæ et non fines ejuſdem pontis*, yet becauſe it was all one Bridge, and it appeared not there, who ought to repaire the reſt, ſo of no value, he was put to anſwer over 47. *Aſſiſe P.* 37. *Aſſiſ.* 353.

And note there, although the Soyle be anothers, yet he may well uſe it for making Reparations without his leave &c.

IX. *Aſſiſe of way, and when it lyeth*

IN an Aſſiſe *de libero tenemento*, and the Plaintiff made his plaint of a way over the land of the Defendant, and it was challenged, becauſe this is no profit but eaſement, and adjourned, and now judged, becauſe that the Writ is *de libero tenemento*, and the plaint of a way which is no freehold, *&c.* the Plaintiff took nothing, but was amerced, 34 *Aſſ. P.* 13. *Aſſ.* 317.

An Aſſiſe of Nuſans lyeth for a way which is all ſtopped up, and this by the Terr-tenants or one of them. Otherwiſe an Action upon the caſe 33 *Hen.* 6. *fol.* 26. Action upon the caſe 13. *Vide diviſion* 7. *cap.* 1.

Hanck ſaid, that an Aſſiſe lyeth not for not doing, as for not repairing, not cleanſing, *&c.* But where a man doth that which he ought not to do; the Aſſiſe lyeth, as by raiſing a Nuſans, or by ſtopping, *&c.* and for not doing, an Action upon the Caſe lieth, which *Thirn*: granted, *Trin.* 11 *H.* 4. *fol.* 82. Action upon the Caſe 30.

In an Action upon the Caſe for ſtopping an hole by which the water and the fiſh did run readily from his Weares in his Mannor of *W*: the Defendant ſaith that he himſelfe hath a Weare more neer, *&c.* and that which he made was in amendment of his Weare, and in his own Soil, and demanded Judgement, &c. And for that the Writ abated: For the Defendant being Terr-tenant where the wrong is ſuppoſed to be done, the Plaintiff ought to have an Aſſiſe of Nuſans by *Green*, *P.* 31 *Edw.* 3. Action upon the Caſe 38.

X. *Action upon the Statute, and the authority of the Marſhall of the Kings houſhold.*

A Declaration in an Action upon the Statute of Labourers, Liveries, forfeiture of Marriage and others &c. and the forms of the Writs.

IN an action upon the Statute of Labourers, declaring that the Defendant a certaine yeare, day and place took one *A.* out of his ſervice, and was compelled to ſet down the day which hee retained the ſaid *A.* in certainty, and the iſſue was, who firſt retained him, *H.* 3 *H.* 6. *fol.* 31. Action

upon

upon the Statute. *Vide Fitzh* upon this matter abundantly. *fol.* 167.

In an Action upon the Statute of Liveries againſt divers, ſuppoſing that they ſeverally *&c.* and declares that every one of them had received a robe, and it was good. As in a writ of *Decies tantum*, the Plaintiff declared againſt every of them *&c.* *M.*8 *Edw.*4. *fol.* 22. Action upon the Statute 5.

Information for the King upon the Statute of Liveries, hee ſhall not rehearſe the Statute, nor alledge the certainty upon what Statute it was founded, and yet good: But ſhall alledge that *A.* ſuch a day, he did give unto *B.* in ſuch a place a piece of cloath to make him a Coate, and that *B.* the ſame day received it, and made him a Coate, and uſed it, and it was held naught, becauſe hee did not ſhew where he uſed it. *Huſſey* alſo ſaid, that he ſhall be puniſhed for the receiuing, though he never uſed it. *Vide* the Writ *H.*5. *H* 7 *fol.*17. Action upon the Statute 7.

In Treſpaſs, declaring for hunting in his parke *&c.* and found for him, yet he could not have Judgement according to the Statute *de parco fracto*, becauſe he did not make ſpeciall mention thereof in his Writ *M.* 47 *Ed.*3. *fol.*10. Action upon the Statute 13. See the ſame reaſon given in another ſuch like action by *Bab: P.* 9. *H.*6. *fol.*2. *Iudgement* 10. yet to *Paſton* it ſeemed, that he ſhould have Judgement upon the Statute, becauſe it is generall, *W* 1. *cap.*20.

In Treſpaſſe againſt many, ſuppoſing they had broken his Parke, and taken his wilde beaſts *&c.* One came and pleaded not guilty, and it was found that he went into the Parke to hunt but killed not any, and aſſeſſed damages, the Plaintiff releaſed the others; whereupon *Hulls* awarded, that hee ſhould recover againſt him, and that he ſhould be taken and had to priſon for three years, and make fine to the King, and at the end of the three years ſhould finde ſurety for his good behaviour afterwards, otherwiſe he ſhall abjure the land. 5 *H.*5 *fol.*1. *Iudgement* 62. *Weſtm:* 1. *cap.*20.

Upon a *Quare ſe intruſit matriagio non ſatisfacto* by an Abbot, ſuppoſing that the Aunceſter held of his Predeceſſor Land and Rent, and that he offered him a convenient Marriage, and he refuſed, and intruded himſelfe in the time of the Predeceſſor, no agreement being made with the Plaintiff, and all held good without alledging the no agreement made to the Predeceſſor, *T.*11 *H* 4. *fol.*82 Action upon the Statute 8.

Vid C. 5. part. 116 in Palmers *Caſe the Lord ſhall have the Fines* le value, *without tender.*

In this Action the Plaintiff declaers of a tenure in Knights Service, and that he tendered a convenient Marriage, *viz.* *M.* the daughter of *&c.* and no tender without ſhewing the woman. 40 *Ed.* 3. *fol.* 6. Action upon the Statute *Vid.*9 *Eliz. Dyer* 255. If the Plaintiff in his Writ and Count ſuppoſeth a tender, yet gives advantage to the Defendant to traverſe it.

Vid. C. 31. Aſs 26. Br. 612. to h. 8br. 362. 60.

In intruſion of a Ward, declares the tenure, the ſeiſure of the Ward, the tender of the marriage, and that he refuſed, and married himſelfe elſewhere within age, and entred at his full age, having made no agreement with him *&c.* the writ was good, which made the Defendant heyre to his father alone of Lands given in ſpeciall taile to the father and mother, where ſhee

Vid. 21 E. 4 43 16 E 3. *Action the Statute* 14 31 *Aſſiſ.* 16.

ſhe ſurvived, becauſe in the perſonalty, as raviſhment and ejectment of Ward, yet *Finch* argued to the contrary, becauſe the heir ſhall have anſwer to the Tenancy, although he held nothing of him, 43 *Ed.* 3. *fol.* 4. *Action upon the Statute* 10.

Upon a *quare intruſit* by the Leſſee, declaring, that as the Guardian *&c.* and untill full age of the Defendant, to him belonged by the Leaſe which *R.* of whom *T.* the Father of the Defendant held in Knights ſervice, thereof made to the Plaintiffe, and ſaid how that the Plaintiffe was poſſeſſed untill the twentieth year of King *Hen.* the father &c. That this Defendant being within age, that is to ſay, two years before his full age, abated &c. and the Wardſhip of the Plaintiff deteined untill the day of the purchaſe of the Writ, and although it appeared, that if he were within two years of his age, in the twentieth year of *Ed.*2 that now he is of full age, ſo that he detained the Ward to the day of the Purchaſe of the Writ, which was in the ſixth or ſeventh years of *Ed.*3, ſo contrariety in the Declaration, yet becauſe if it were more, yet it is two years. Likewiſe the alledging of two years is a ſurpluſage of the Declaration &c. all was adjudged good, *M.*7. Ed. 3. *fol.* 58. *Action upon the Statute* 19. See there the Declaration in *Ceſſavit* ſhall be to ceaſe for two years, yet it is free to tender the arrerages of twenty years, if be arrear ſo long &c. but this is given expreſly by the Statute, &c.

In valore maritagii, the Plaintiffe declared that the Anceſtor held of the King, that after his death he ſeiſed the Land, and the body of the Defendant, and granted it to him, that he tendred him a convenient marriage, and the Defendant refuſed *&c. & nota*, that the detaining of the Lands after the full age of the heir, ſhall in no wiſe be ſatisfaction to the Grantee of the King, unleſſe that the Land be ſued out of the Kings hands, for the Grantee ſhall render the value to the King *&c. T.* 43 *Ed.* 3. *fol.* 20. *Action upon the Statute* 11.

In a forfeiture of marriage the Plaintiffe ſuppoſed that he tendred a convenient marriage, which the Defendant refuſed, and refuſed the agreement made at his full age, *contra formam Statuti*, and good, for this, *contra formam Statuti* is not underſtood to be but as an action was given by the Statute, but that the value *&c.* and note, that by the Statute the Lord is at his election to retain the Land for the double value, or to demand it by action, 18 Ed. 3. *fol.* 18. *Action upon the Statute* 15. 2 Ed. 2. *Action upon the Statute* 23.

Forfeiture of marriage upon the Statute of *Merton*, he declared not, that the Defendant married himſelf within age, nor in what place &c. yet all good: but without tender within age action lyeth not, *Hen.* 14 Ed. 3. *Action upon the Statute*, 16. the Plaintiffe compelled to alledge what woman he tendred 28 Ed. 3. *fol.* 92. *Action upon the Statute* 18.

Forfeiture of marriage by the Aſſigne of *R* of whom the Anceſtor held &c. and declared upon the tender and refuſal within age, and the marriage agreement not made, and upon this matter recovered the double value for the

the marriage of himſelf, for the generall allegation of (the agreement not made) ſhalbe intended according to that which he ought to recover, *ſcil.* the double value; alſo the Plaintiffe declared that he was poſſeſſed of the body of the Defendant, whereby he needs not to alledge that he is heir of him that is dead *&c.* and alſo in as much as he was poſſeſſed, he need not make any mention of the Grant of *R. Hill* 14 *Ed.* 3. *Action upon the Statute* 17.

In forfeiture of marriage, it needs not ſuppoſe in the Writ, that he is ſeiſed of the Wardſhip of the Land, for this is a ſeverall action, 2 *Ed.* 2. *Action upon the Statute* 23.

See the Writ before, and it ſhall be a good plea to the Writ, to ſay, that the Plaintiffe is now ſeiſed of the Land; ſo that he may take the value according to the Statute, but when the heir had the Land it ſelf for him who is the aſſigne, action lyeth *&c. Temp. Ed.* 1. *upon the Statute* 36.

In a forfeiture of marriage it ſhall be a good plea to ſay, that his anceſtor held of another by priority, 2 *Ed* 2. *Action upon the Statute* 23. 7 *Ed.* 2. *Action upon the Statute* 32.

In a forfeiture of marriage where he demands the double value, he ought to declare upon tender and refuſall, but where he demands but the ſingle value, he needs not tender 31 *Aſs. Pla.* 26. *Action upon the Statute* 32.

In an action of a woman raviſhed *cum bonis &c.* againſt *R.* and a woman, the action is good, although the woman were dead, or divorced at the time of the action brought, and ſo not his wife, 43 *Ed.* 3. *fol.* 23. *Action upon the Statute* 12. 44 *Aſſ pla.* 13. agree, for it is not to recover the wife, but damages in this action.

The King ſueth a Writ, which ſheweth (as it is ordained by the Statute) that if any man be put upon an enqueſt, and take of the one part or the other *&c.* and the Writ ſheweth that *W.* and *R.* did take, and the Writ was directed to the Juſtices of the Bench *&c.* and the matter appearing of Record, it ſhall be as ſufficient for the King as an Indictment *&c.* 8 *Ed* 3 *fol.* 30 *Action upon the Statute* 21.

T. brought a Writ againſt *N* Sheriff of *S.* in theſe words, *Rex coronat. &c. Si* T. *&c. Pone* N. *&c. oſtenſur. quare cum inter &c. ordinatum quod nullus Vic. ponat in inquiſit. &c. aliquos nec aliter, nec alio modo quam ordinatum eſt per Statutum, & ſi &c. puniatur* &c. *Predict. Vic. qui in quadã inquiſitione inter* R. *petent. et pred.* T. *tenentem de Manerio de* D. *homines minus ſufficient. nimis remotos, et magis ſuſpectos contra* &c. *per quod idem* T. *Manerium predictum amiſit* &c. and the Statute *Articuli ſuper Chart* ſaith, that the Sheriff or Bailiff ſhall put upon the inqueſt, the neareſt, the moſt ſufficient, and leaſt ſuſpected, & declared that the Sheriff put upon the Inqueſt five which were not ſufficient, becauſe they had not an 100. ſhillings in Land, and dwelling far of, *ſcilicet* twenty miles, and ſuſpected, becauſe they had taken of *R.* to ſpeak for him, and forced the other to ſpeak for *R.* and the Writ and the Record was viewed if they were on the Inqueſt before

before they were put to anſwer, and did not recover damages, but only for delay, not according to the value of the Land &c. & *Ed* 3. *fol.* 30. *action upon the Statute* 20.

Contra formam Feoffamenti againſt a Prior, for that he did diſtrain him to do ſuit at his Court of *T.* the Defendant alledged this at the prayer of the Plaintiffe, Predeceſſour of the Defendant in allowance of ſuit due to the Court of the Prior of *P.* for his eaſe &c. they were at iſſue upon the ſeiſin of the ſuit to the Court of *P.* time out of mind, *&c. M* 3 *Ed.* 2. action upon the Statute 24.

Contra formam Feoffamenti againſt *B.* and *E.* his wife, declares that they diſtrained him to do ſuit at their Court of *C.* contrary to the form, *&c.* where he nor his anceſtors did uſe to do this ſuit *&c.* and it was good without ſhewing of the feoffment, they were at iſſue of the ſeiſin of the ſuit to the Court of *C.* time out of mind *&c.* 3 *M. Ed* 2. Action upon the Statute 25.

The Major and Commonalty of *L.* brought an action of Treſpaſſe upon the Statute of Foreſtallers againſt *I.* declaring that he was a common foreſtaller &c. of beaſts and wares, and ſold them again at double *&c.* and becauſe no certain fact was alledged, the plaint abated; *M.* 3 *Ed.* 2. action upon the Caſe 26.

I. brought an action againſt *C.* for that he did abet and procure *Alice* to ſue againſt him an Appeal of the death of her husband, by which he was impriſoned and afterwards acquitted, and the Writ and Declaration adjudged good, without alledging that the Appellor is not ſufficient, yet an action otherwiſe lieth not, and although that he had declared of Damages of 1000 *l.* where the damages by award, for which action alone lyeth, were onely 100 *l. M.* 3 *Ed.* 2. Action upon the Statute 28.

Action brought againſt the Bayliffe of the Biſhop of *W.* for amercing him for a ſmall Treſpaſſe contrary &c. and therefore wrongfully, that whereas this Plaintiff ſued Actions of Treſpaſſe againſt many in the Court, &c. at ſuch a day, at which day he was eſſoyned by an eſſoyn againſt all, and challenged becauſe there were not ſeverall eſſoyns againſt every one, and thereupon a non-ſuit was awarded, and he amerced a mark and diſtrained for it, notwithſtanding a Prohibition delivered to the Bailiffe in the preſence *&c.* and the delivery of the Prohibition not traverſed, if the amerciament were offered by his Peers, *M.* 10 *Ed.* 2. action upon the Statute 34.

Note, the Writ founded upon the Statute ſuppoſed that a man had diſtrained his Beaſts of his Plow, where he might have found others, *&c.* lieth not but only between Lord and Tenant, by *Stone* and *Thond.* Juſtices, for it is not granted to him which cannot ſue a Replevin, and plead the ſame to Avowry, and out of his Fee is no plea here, becauſe the Action confeſſeth the contrary, and the Action lieth before the deliverance made, or after, for the wrong, *M.* 18 *Ed.* 2. action upon the Statute 35. ſhews unto you,

That it is provided, *&c.* that every free man ought to make an Attorney at the County, Hundred, Court Baron, *&c.* And that he brought the Kings Writ to the Court of the Prior of *B.* holden, &c. and prayed him for to receive an Attorney for him, and he would not: And becauſe that the Mannor was ancient Demeſn, and the Plaintiff was a Tenant therof, and to be taxed by the Prior &c. ſo no free-man, for he ſhall not have any Action, but *Right Cloſe*, or *Monſtraverunt*, the opinion was that the Action did not lye, *Temp. Ed.* 1. *Attorney* 106.

II. *Bar in Action upon the Caſe.*

IN an Action upon the Statute of Labourers againſt the Maſter, it is a good Bar to ſay, that a long time before &c. he retained him at *D.* in ſuch a County &c. *H.* 3. *H* 6 *fol.* 31. *action upon the Statute.* 1.

Not guilty is no plea in an Action upon the Statute of Liveries, nor in a *Decies tantum*, but he muſt anſwer to the Writ, as, that he did not give contrary to the form of the Statute &c. *M.* 8. *H.* 6. *fol.* 10. *action upon the Statute* 2.

It is no Bar in an Action or Information upon this Statute againſt him who took &c. to ſay, he did not uſe it: for yet he ſhall be puniſhed, by *Huſſey*, 5 *H.* 7 *fol.* 17.

In a Writ *De parco fracto*, the Defendant ſaid, that the Plaintiff, nor his Anceſtors, nor thoſe whoſe Eſtate he hath, never had any Park there, nor had any Grant but of the King, *&c.* And it was held no good plea, without ſhewing ſpeciall matter that it is incloſed, and juſtifie: But he may plead not guilty, and give this matter in evidence. *Newton* ſaid, that is to the action, *Mi:* 18. *H:* 6. *fol:* 21. *Paſton* ſaid, that it was no Park at the Common Law, wherfore he ſhall not preſcribe in it.

Upon a *Quare intruſit maritagio non ſatisfacto*, it ſhall be a good Bar, that the Plaintiff did not tender him a marriage, *&c.* And note, that no words do make a ſufficient tender without ſhewing the party, *H:* 40. *Ed:* 3. *fol:* 6. Action upon the Statute 9.

In a *Valore maritagii*, it ſhall be a good Bar againſt the mean Lord, to ſay, that he hath detained the Land after his full age, and levied the value: But it is no plea againſt the Grantee of the King without alledging this detainer to be wholly after this, that the Land was ſued out of the hands of the King, for otherwiſe the King ſhall be anſwered for the profits, of what age ſoever the Heir be, ſo that it ſhall not be intended that the Grantee had any to his own uſe; for the other ſhall not have an averment that the Land was more worth which the King had, *Tr:* 43 *Ed.* 3. *fol:* 20. *Action upon the Statute.* 11.

In a forfeiture of Marriage, they were at iſſue upon the tender of Marriage

riage within age, and it was found for the Plaintiff who prayed double damages: But *Hill* awarded but ſingle damages, *Quia damna non dantur per ſtatutum*, and alſo *Foris-factura quoad damna in duplo non intelligitur* but when the Heirs marry themſelves within age; and here it was confeſſed that he was married at full age, *P*:16 *Ed*:3. action upon the Statute 14.

In a forfeiture of marriage, the Defendant ſaid, that the Anceſtor of the Plaintiff whoſe Heir he is, did enfeoff *I.* of the Land to hold by paying twelve pence for all ſervices, which *I.* did enfeoff his Grand-father before the Statute to hold of him, *&c.* and he could not compell the Plaintiff to anſwer to the Deed of his Anceſtor to *I.* but if he were ſubject to the Diſtreſſe of the Anceſtor of the Defendant, he ought to have anſwered, *&c.* and iſſue joyned upon the Tenure, 18 *Ed.* 3. 18. *action upon the Statute* 16.

Upon the Statute of *Merton*, the Defendant ſaid, that he married himſelf at full age, without that, that the Plaintiff tendred him marriage within age, iſſue taken therupon, *Et alii contra*, *H*:14 *Ed*.3. *action upon the Statute* 16.

The Defendant ſaid, that he was born at *D.* and married himſelf at full age, iſſue offered, but he durſt not demur without traverſing the tender within age, and the Venur awarded where the tender was aſſigned, *Hil*: 14 *Ed*:3. *action upon the Statuta* 17.

In a forfeiture of Marriage alledged the tender certain, *Ut oportet*, the Defendant ſaid, that he was of full age at the time of the tender: *Alii contra*, *P*:28 *Ed*:3 *fol*.92. *action upon the Statute* 18.

Not ſeiſed of the Land, *&c.* is no plea; Alſo it is no plea to ſay, that the Plaintiff was ſeiſed of the Land, and that he might retain it according to the Statute, for he had his choice, *&c.* But it was a good plea to ſay, that his Father held of another by priority, notwithſtanding the ſeiſure, *&c.* *T*. 2 *Ed*. 2. Action upon the Statute 23. Of *Priority*, 7 *Ed*.2. *action upon the Statute* 33. *agreeth.*

No plea to ſay, that the Plaintiff retained, *&c.* for the reaſon aforeſaid: And alſo it might be that he was Heir to the Meſn who had no Land, 18 *Ed*. 3. *fol*. 18. *action upon the Statute* 30.

The Defendant ſaid, that he had certain Lands of one *D.* in Knights Service, and that he claimed the Wardſhip, and had the Wardſhip of our body, and granted the Marriage to one *W.* who married us to his Siſter, *&c.* And foraſmuch as that the Plaintiff might have recovered againſt him, who deforced him of his Ward, Judgment, *&c.* and no plea, becauſe he anſwered not to the Tenure, nor the tender of the Plaintiff, wherfore he did plead as afore, ſo that the Plaintiff was never ſeiſed of the body, nor of the Cuſtody. Iſſue taken, *Alii e contra*, *H*. 3. *Ed*. 2. *action upon the Statute* 27.

Note, that the Lord who recovers all in Damages in this Action ſhall not have execution of the Land which was in his Wardſhip, for the Sta-

tute ſaith, *Teneat terrum quouſque*, which is to be underſtood by way of retainer, and not when he brings his Action, *P*: 33 *Ed*. 3. *action upon the Statute* 31.

In a Writ of Raviſhment of a mans Wife, and his Goods againſt two, it is no plea to ſay, that there was a Divorce made, *&c*. nor that the woman is dead, nor that one of the Defendants is a woman, 43 *Ed*. 3. *fol*. 23. action upon the Statute 12. See concerning this 44. *Book of Aſſiſe*, *P*. 13. *action upon the Statute* 22. *agreeth*.

The Defendant ſaith, that this *K*. who he ſuppoſed to be his Wife, at the time of the marriage, was but ſeven years of age, ſo that ſhe could not aſſent, and ſaid, that ſhe never aſſented afterwards, ſo that ſhe was never his Wife; and by the opinion it ſeemed to be a good plea, for before the aſſent at age it is no marriage to any intent, for no divorce ſhall be, and although there needs no new marriage yet it is meet to have words of aſſent, and thoſe of Matrimony, as, *I take you to my Husband*, *&c*. Yet *Ing*. ſeemeth, that he ſhall anſwer to the wrong, ſuppoſed if himſelf hath no right, *M*. 47 *Ed*. 3. *action upon the Statute* 37.

Ing. ſaid there alſo, if the Lord marry an Heir female within age, and ſhe conſent not at the age of twelve years, the Lord ſhall not marry her again.

A. ſued a Bill before the Juſtices of Aſſiſes, ſhewing that he following his buſineſſe before the ſaid Juſtices, and that one *R*. aſſaulted him before the Caſtell in their preſence, and with force and armes took his Wife from him, and led her away with his Goods; and the Defendant pleaded not guilty to all, and was found guilty by the Inqueſt, and was taken preſently: And note, that the woman was of the aſſent with *A*. and would not have an Aſſiſe proſecuted againſt him by her Husband, and her, *&c*. yet the Plaintiff recovered Aſſiſe, 39. *Aſſiſe P*. 1.

A man was outlawed at the ſuit of the party in this Action, he was alſo indicted for the ſame matter, and outlawed at the Kings Suit, and afterwards came into the Chancery with the party, who acknowledged an agreement made with him, wherupon he had a Charter of Pardon, reciting all the matter: And this was alledged in the Kings Bench againſt the party, and againſt the King, but the acceſſory who was indicted at the Suit of the King (this notwithſtanding) was put to anſwer, 42 *Aſſ*. *P*. 16. *Ch*: 15.

Contra formam Feoffamenti, againſt a Prior who diſtrained him to do ſuit at his Court of *C*. the Prior ſaid, that the Plaintiff held of him by doing Suit at his Court of *P*. and at the deſire of the Plaintiff for his eaſe he did exchange this Suit to the Court of *C* in allowance, *&c*. the Plaintiff traverſed the Seiſin of the Suit at the Court of *P*. which was the Iſſue, *M*. 3 *Ed* 2. action on the Statute 24. *vide* the other Suit ſtood at the election of the Prior, whether he took rent for the Suit upon compoſition, *&c*.

A Writ, for that he diſtrained him to do Suit at the Court of *D*. againſt *B*. and *E*. they ſay, that he holdeth of them as of the Dower of *G*. and the Inheritance

Inheritance of *C.* by Suit at the ſaid Court, of which the Anceſtor of *C.* was ſeiſed before the limitation; and hereupon at iſſue, *M.* 3 *Ed.* 2. action upon the Statute 25. and had aid of *C. vide Fitz. Nat. Br. fol.* 163.
It is no plea in this Action, that the Plaintiff gave him no Prohibition, but it is a good excuſe to ſay, that the Amerciament was offered by his Peers, and that he only did execution but as Bailiff, *&c. M.* 10 *Ed.* 2. action on the Statute 34. *vide Fitz. Nat. Br. fol.* 75.

III. *Where Statutes made in* England *ſhall bind them in* Ireland.

NOte by *Huſſey*, that Statutes made here ſhall bind thoſe of *Ireland*, which was not much gainſayd by the other Juſtices, though ſome of them were of a contrary opinion the other Term, *M.* 1 *H.* 7. *fol.* 3. *action on the Statute* 6.

IV. *Upon the Statute of* Wincheſter *againſt them of a Town, upon Hue and Cry not purſued.*

NOte by *Knivet*, *Si* he who was robbed, where Hue and Cry was levied, and not purſued, ſueth thoſe of the Town (as well he may) for his damages, & recovereth, he ſhall not have a *Capias ad ſatisfaciendum* againſt them, becauſe no wrong is ſuppoſed to be in them, but they are charged by a ſpeciall Law, *H.* 42 *Ed.* 3. *fol.* 11. *Execution* 34. He may have an *Elegit &c.*

V. *Where an Action lyeth which giveth* Rationabilem partem bonorum.

IN Debt by *W.* and *A.* his Wife, againſt the Executors of the Predeceſſor of *A.* Plaintiff, declare, that according to the of the County of *North.* that the Children unadvanced ought to have their reaſonable part of the Goods of their deceaſed Father, that they detain the reaſonable part of *A* &c. The Executors ſay, that ſhe was married in the life time of her Father, and by her Father, and demanded Judgment, &c. and afterwards aver that this marriage was a convenient advancement, &c. the Plaintiff who is the Husband had no Land, nor yet hath; but after they were at iſſue, whether ſhe were married by her Father, 3 *Ed.* 3. *Itin. North. Debt* 156.

In

In a detinue by *A.* againſt the Executors of his father, the Writ alledgeth the Cuſtome of the Realm, that the wife ought to have the third part, the children the third part, and the reſt the Executors, and he demands the third part as onely child *&c.* The Action is not maintenable by Law, by *Berr.* and *Herle*; and *Berr.* ſaid, the great Charter is to be underſtood of the proper goods of Infants which were in the keeping of their father *&c P.*17 *Ed.*2.*detinue* 58. but it lyeth onely upon a particular Cuſtome of one County &c.

Such a Writ was maintained upon the Cuſtome of a Countrey, *M.* 34.*Ed.*1. *Detinue* 60. and *Malm.* ſaid, that he had ſeen ſuch an Action grounded upon the Statute of *Magna Charta*, and it was held no plea to ſay, that the Plaintiff had a ſiſter not named, for if ſhe will not ſue, ſeverance—lieth not here, by *Heigham*, but ſee *H.*13 *Hen.*4.*Severance* 30. where two ſued an Action of detinue, as heirs for the goods by the Cuſtome of Gavel-kind, and the one made default, he was ſevered, becauſe they might ſue ſeverally, *vid.* all agreeing and the writ and the Declaration, *Tr.*1 *Ed.*2.*Detinue* 56. the Defendant alledged Land demiſed unto him by his father, he ſaid, this was for debt, not for advancement, and demurred.

In detinue declared, that the Cuſtome of *Suſſex* is, that the heir ſhall have his reaſonable part of the goods of his father, who died inteſtate, and alledgeth that they are come to the poſſeſſion of the Defendant, and the opinion of *Thorp* was againſt him, becauſe he demanded no certainty, and perhaps the Defendant is Adminiſtrator, and ſhall be charged with all to the Ordinary. *Vfflet*, this Cuſtome hath been allowed at all times before the Ordinary, *et in Eire P.*39 *Ed.*3. *fol* 9 *Detinue* 38.

The Heir ſhall maintain ſuch an Action againſt the wife of his father by the Cuſtome of *Surrey*, which giveth him in every Mannor or houſe of his father, the principalls in every place, as the beſt bed, Table, Pot, Plow &c. The Wife pleaded in Barre by the Cuſtome, becauſe that ſhe had a joint eſtate with the husband, H.30 *Ed.*3.*fol.*2.*Detinue* 51.

A woman brought an Action of Detinue againſt the Executors of her husband, and declared upon the Cuſtome of the Land, that if he have no iſſue or iſſue, if they be all advanced, that ſhe ought to have the moyety, he had goods to the value of 1000 l. debt, and died without iſſue between them; ſo the Moyety belonged to her, and the Declaration was good without alledging that he had no iſſue, and if he have, the Executors ought to declare it; and this was to the Action for part, and after they pleaded to the Juriſdiction of the Court, becauſe the matter is ſpirituall, and they have not yet performed the deviſes in the Will &c. *M.* 30 *Ed.*3.*fol.*25. *Detinue* 52.

Vide ſuch a Declaration, *H.*17 *Ed.* 3. *fol.*9. *Reſponder* 15. and where one Executor ſhall anſwer without the other by the Statute, *P.*31. *Ed.* 3. *Reſponder* 6. agreeth, and *M.*28 *H.*6 *fol* 4. *Reſponder* 47. agreeth 7 *Ed.* 4. *fol.*29. and the wife had Judgement againſt all the goods of the deceaſed,

and

and ſhe declared upon the Cuſtome of the County to maintain her Action.

See *Fitzh fol.* 122. *et Glanvile lib.*7. *cap.* 6.

VI. *Action upon the Statute for regrating in Markets.*

IN an Action upon the Caſe, declares that he hath Fair and Market, and how the Defendant bought certain beaſts, and ſold them again in the ſame Market without paying Toll: That another Action was depen- in the Common Bench for the ſame Treſpaſſe is no Plea, *P.*7 *H.*4. *fol.* 44. *Action upon the Caſe* 26.

VII. *Action upon the Statute againſt publiſhing of News.*

SIR *Thomas Seton* Juſtice brought an Action againſt one *Lucy*, who called him, Traytor, Thief, and Robber, in the preſence of &c. the Defendant pleaded not guilty. And note, that falſe reports &c. whereby diſcord or ſcandall may ariſe between the King and his people, or the great men of his Kingdome, an Action lies, and the Defendant was found guilty and impriſoned, and the Juſtices adviſed how to increaſe the damages, 30 *Aſſiſ. P.* 19. *Action of the Caſe* 41. and he ſhall be impriſoned untill he have found in Court him by whom the words were ſpoken, *vide* the Statute, and the Juſtices and other men ſpecially named, 2 *Ri.* 2. *cap* 5. *Weſt* 1. *cap.* 33. *vide* 2 *R.* 2. *cap.* 5. 12 *R.* 2. *cap.* 11. *and* 1, *and* 2. *P. and M: cap.* 3.

VIII. *Action upon the Statute, that the Sheriff would not ſet his ſeal to a Bill.*

A Man delivers a Writ to the Sheriff by Bill, and becauſe he refuſeth to ſeal it, others do ſeal it, and according to the Statute, and now the Sheriff returns *tarde*, and the party prayed to have a Writ to the Juſtices of Aſſiſe and had it, and all the circumſtances were found for him by the Jury upon an inqueſt of office, and dammage of fourty ſhillings, and would have had double damages, but becauſe none of the Statutes do give it, he is to have the damages given by the Jury, and all this without putting the Sheriff to his anſwer, 29 *Aſs. P.* 58 *Aſs.* 395. *Weſtm.* 2. *cap.* 39. *A.* 2. *Ed.* 3. *cap.* 5.

IX.

IX. *Action upon the Statute that no man ſhall ſhip away Wool but ſuch as ſhall find ſureties to bring in Bullion.*

AN Information in the Exchequer, that ſuch a Merchant hath ſhipped Wools without finding ſurety to import Bullion for every ſack according to the Statute, and a Writ was awarded to the Cuſtomer of the Town, and gave him day *ſub pœna* to bring forth his ſureties, and the ſurety of this Merchant, at which day he made an eſpeciall return to be diſcharged by the generall words of the Statute, 36 *Ed.*3.*cap.*11.*Wools* 912. *and* 45 *Ed.*3. *cap.*4. which grants that no Impoſition ſhall be demanded of the Commons, nor of any ſack of Wool, but the ancient Cuſtome of half a Mark, and that no impoſition nor charge ſhall be put upon Wools without the Parliament, and the opinion of the Juſtices was that by them the firſt Statute of 14 *Ed.*3.*cap.*21. Cuſtome 1.2. was not repealed, yet the Statute of 11 *Ri.*2. *cap.*2. was alſo put, 4 *Ed* 4.*fol.*3. *Barre* 309. 14 *Ed. cap.*4.

X. *Action upon the Statute, that a man ſhall not diſtrain in one County, and drive into another, and upon that, that he ſhall not diſtrein in the high ſtreet, nor out of his own fee.*

A Writ upon the Statute for taking of his beaſts at *S.* in the County of *Derby*, and driven to *T.* in the County of *Nott.* the Defendant alledgeth how he holdeth this Land in *S.* of him by ſuit at his Court of *N.* in the County of *York*, and that he did drive them by *T.* being in his next way towards *N.* and there detained them untill agreement was made with him, and it was held a good plea, *P* 14 *Ed.*3.*Bar.*275. *& vide* 22 *Ed.*4.*fol.*11. agreeth, and that the Lord may lawfully drive the beaſts to the Mannor, by reaſon whereof he holds of him in another County, for the Tenant may have notice of the driving, and this was the miſchief at the Common Law, and *M.* 1 *H* 6. *fol.* 3. agreed *per Curiam*, but *H.* 30 *Ed* 3 *fol.*5. the contrary was adjudged, and that the Plaintiff recovered damages, taxed by the Court againſt the Lord who made the like juſtification of the Mannor out of which &c. in another County, and as to the Caſe of 14 *Ed.*3. it was anſwered, that there the Queen was Lord, who is a perſon exempt &c. and the Plaintiff recovered, *ſed multi dixerunt quod male*, for the Statute ſpeaks onely that the Lord ſhall be amerced &c. *Diſtreſſe* 16.

In a Writ upon the Statute, for that he took his beaſts out of his fee, where he was no officer of the King: the Defendant ſaid, how that a *Withernam* was to him directed, by which &c. and pleads this to the Writ, but the

the Court charged it not, but to plead upon the cauſe of the taking &c. *M.19 Ed. 3.Bar.281.*

In an action upon the Statute for taking beaſts in the high way for a diſtreſſe, and the Writ was at the beginning, as *de communi conſilio* ſo grounded upon the Statute, and in the end ſaid, *contra legem & conſuetudinem Angliæ*, and this is at the Common Law, ſo contradicting, but ſaith, that the Statute made the Law and Cuſtome, by which it is good; alſo it it is not needfull to ſet down the price, becauſe the Writ alledgeth the taking to be for a diſtreſſe, and not that he claims a property, neither is it needfull in the Writ *ad grave damnum & contra pacem &c. M. 19 Ed.2. Writ* 842.

Vide 6 Ed.3.fol.23. The Iſſue was in the like action, if the taking were in the Kings high way, *vide* to what wayes the Statute reacheth.

The Tenant may lawfully reſcew from his Lord, which he diſtrained in the high ſtreet, or ſhall not have action upon the Statute, 17 *Ed.3. fol.43.*

But it ſeems he ſhall not have an advantage of the Statute in a Replevin, becauſe he may have an action upon the Statute, 4 *H.6.fol.2.*

XI. *Action upon the Statute, that a man ſhall not ſell corrupt victual.*

THe Action ſuppoſeth, how that the Plaintiff *quandam buttam Rumney de prefato A. bargam. predict. A.ſciens illam eſſe corruptam, & non habilem, warantizabat eſſe habilem & non corruptam, pro quadam pecuniæ ſumma,* and *habilem* was excepted againſt, becauſe it is with *H.* and taken away; alſo it is not needfull to alledge the certainty of the ſumme in the Writ, but in the Declaration, and *Martin* and *Babington* ſaid, that the Warrant is to no purpoſe, becauſe an action lyeth without that upon the Statute, and lyeth upon the ſelling of the ſervant of the Defendant by his Commandement, otherwiſe he may traverſe the ſale, 9 *H.6.fol.53. Action upon the Caſe* 5. *A.* 4 *Ed.* 3: *cap.* 11. *A.* 23 Ed. 3. *cap.6. A.* 13 *Ri.2.8.*

XII. *Action upon the Statute, that a man ſhall not pay a Fine* pro pulchre placitando.

ATtachment brought by the men of *A.* againſt the Pior of *C.* for that he diſtrained them to make a Fine *pro pulchre placitando* contrary to the Statute, *Anno* 13 Ed. 1. *Attachment* 8 *Marlb. cap.* 11. 1 Ed. 3. *cap.*8,

XIII. *Action upon the Statute of Admeaſurement.*

ADmeaſurement lyeth well againſt a Lord of parcell of the Town, for a Tenant who is not his Tenant, and it is a good plea to ſay that he hath a Coparcener and prayeth aid &c. for Admeaſurement ſhall not be by parcells, *P.* 32 *Ed.* 1. *Common* 29. *See the Caſe and* Merton *cap.* 6.

XIV. *An Action upon the Statute that he ſhall deliver a Copy of a Libell.*

UPon Debate of an Adminiſtration, it being ſeverally granted by two Biſhops, the one private upon ſuggeſtion, that the goods were in divers Dioceſſes, the other ſued a Prohibition upon the Statute to deliver him the Copy of the Libell, and ſurceaſe in the mean time out of the Chancery, and for not delivering hereof, nor ſtaying the proceedings, he ſued an Attachment upon the Prohibition, rehearſing the Statute againſt the Officer of the Court, and did ſurmiſe in the Common Bench, that he was in danger to be excommunicated, and by adviſe of the Juſtices he ſhall have a ſpeciall Prohibition of the Court upon the Statute, to ſurceaſe the ſuit untill he hath a Copy, becauſe he hath an Action here depending; becauſe he had not delivered it before: So note Prohibition of the Common Bench, having Action depending there for the ſame cauſe, or for wrong done unto him for the ſame matter, *M.* 4 *Ed.* 4 *fol.* 37. *Prohibition* 8. 2 *Ed. H.* 5 *cap.* 3.

XV. *Declaration in an Action before the Marſhall and Steward of the Kings houſe, and Barre therein.*

NOte by the Juſtices it was declared, that a man ſhall not have an Action before the Marſhall or Steward of the Kings houſe for Treſpaſſe, or upon any Contract made within the verge, but where the one or the other party is of the Kings houſhold, and if he do otherwiſe, the other ſhall have an action upon the Statute, *Articuli ſuper chartas cap.* 3. 10 *Hen.* 6. *fol.* 13. *Action upon the Statute* 3. and all that he hath done otherwiſe ſhall be null by the Statute.

Action againſt *B.* and declares that where none ſhall be ſued in the Marſhalls Court, where one party is not of the houſhold, that the Defendant had there vexed him *&c.* the Defendant pleaded that there is no ſuch Record, the Plaintiff durſt not demur, but ſaid, there is ſuch a Record,

Record, iſſue taken upon it *&c. P.*7 *H.* 6.*fol.*30. *Bar.*7. and upon ſuch Iſſue the Writ ſhall be ſent to the Marſhall and Steward, to certifie how it was, 10 *H.*6 *fol.*13. *Eſtoppel* 18.

Action upon the Caſe upon the Statute, concerning a ſuit before the Marſhall *&c.* and declares that the Defendant ſued him there, where neither the one nor the other were of the Kings houſhold, and it was good, whereby the Defendant would have eſtoppell by the Record of the Court there, which is, *Quod talis ſequitur, verſus talem de Hoſpitio Domini Regis*, and it was no eſtoppell, becauſe he is to defeat the Record by this Action: as the admittance of a ſuit in the Court of *Rome* ſhall not conclude me to have a Premunire *&c. Trin.*3 *H.*6.10 *Hen.*6.*fol* 13. *Eſtoppel* 18.

XVI. *Conſtructions for all Statutes in generall.*

NOte by all the Juſtices clearly, if a Statute be made of ancient time, and never put in ure, yet it is a good Statute, and of effect to be put in execution upon occaſion, 11 *H* 4.*fol.*8.*Bar.* 186. and therewith agreeth 4 *Ed.* 4 *fol.*3. upon the Statute of Wools ſhipped, and Bullion imported.

Note, that a Charter of legitimation made to an alien born by *Hen.* 6 is not avoyded by the Act of Parliament, by which all acts of the ſaid *Hen.* were repealed by generall words, as it was adjudged in *Bagots* Caſe, 9 *Ed.* 4.*fol.* 2. *Denizen.*1. *vid.*4 *Ed.*4 *fol.*3. concerning generall words of Statutes.

The Chancellour ſaid, that a Merchant ſtranger ſhall not be bound by our Statutes which are *introductivæ novæ legis*, but otherwiſe it is of thoſe which are *declarativæ antiquæ legis*, and ſome ſay, they ſhall not be bound but onely by thoſe Statutes which are concerning forfeiture of merchandiſes, and thoſe ſhall bind as well aliens, as Denizens, *M.* 13 *Ed.* 4.*fol.*9. *Denizen.* 2.

The King grants to the Prior of *Edington*, and his fellow Friars, and their Succeſſours, That when any Tax, Tallage, Tenth, or fifteenth ſhall be granted, that they, their Goods, Chattels, Lands and Tenements ſhall be quitted and diſcharged, and after the Clergy by Parliament grant a Tenth to the King, and the Collectors pray to be diſcharged for the Prior *&c.* and notwithſtanding that the thing was not actually in the King, at the time *&c.* and he himſelf party to this grant, who was one of the Clergy, yet the opinion was, that the ſpeciall grant made before ſhould not be avoyded by the generall words of the Statute, which gives the Tenth of all the Clergy; as thoſe of *London* ſhall have a Writ of Right to recover Lands in tail, notwithſtanding the Statute of *W.* which gives a Formedon, for ſuch a generall thing ſhall not exclude any ſpeciall, *per Forteſcue*, but the Statute ſhall bind all thoſe who are at the Common Law,

at the time, and ſhall not exclude eſpeciall Priviledges, *M.* 19 *H.*6 *fol.*62. *Grant* 10.

The Kings grant to the Prior of *Lewes*, that he ſhall be diſcharged from the Collection of the Tenths and Fifteenths during his life, afterwards the Clergy by a Parliament Grant to the King a Tenth, Proviſo *quod nulla perſona Eccleſiaſtica* be diſcharged with the Collection, & the Biſhop writes to the Prior for the Collection *&c.* who ſends the Kings Letters Patents, and the opinion of *Forteſcue* was, that he ſhall nôt be diſcharged, for by this means every one which ought to collect, ſhall be diſcharged, and the Biſhop charged to collect, which he ought not: *hodie contra*, *M.* 10 *H.*6. *fol.* 12. *Grant* 11 *& vide Tr.*26 *H.*6. *fol.* it was admitted a good grant.

The King in Parliament grants to *F.* and his heirs the Hundred of *B.* and afterwards by generall words all Hundreds were annexed to the Counties by the Statute, yet ſuch a generall act ſhall not take away the inheritance granted before, *M.* 18 Ed. 3. *Petition* 1. See the Statute by expreſſe words repeals grants of the King of Hundreds for life or otherwiſe, and after, but the Sheriff had allowance *&c.* of the form *&c.* 2 Ed. 3. *cap.* 13. *Sheriff* 7.

Hugh Deſpencer. was baniſhed in the time of Ed. 2. by Parliament, and after this baniſhment was repealed, and afterwards he made a Feoffment to one *A.* and after in the time of Ed. 3. this repeal was aniented by the Parliament, and adjudged that the baniſhment ſhould ſtand in force, and all his Lands ſeiſed, and the Land alſo of *A.* and the opinion was, that this later Statute ſhould have reference to make void all acts after the firſt baniſhment, and note, that this laſt Statute was made after the death of *Hugh*, yet all good, as an attainder of a man after his death by Preſentment, *per Scot* is good, *Trin.* 15 Ed. 3. *Petition* 2.

Rediſſeiſin lyeth not but upon a Plea which commenceth by Writ, and before the Juſtices, and not upon freſh force in a Town *&c.* alſo it to be *per primos Juratores, & alios*, Merton *cap.* 3. M. 14 Ed. 2. *Rediſſ.* 9. and by the Statute of *W.* 2. *cap.* 26. Rediſſeiſin is given upon recovery by default, *Redic. vel alio modo ſine recognit. aſs. vel Jurat.*

XVII. *Where the Satute ſhall not extend to all, that is within the expreſſe Letter thereof.*

THe Statute of *W.* gives Counter-plea to avouch generally, to ſay, that the vouchee nor none of his Anceſtors had not *&c.* and ſaith not, his Anceſtors whoſe heir he is *&c.* yet if the younger Son be vouched as heir, where his father was ſeiſed, the Counter-plea ſhall be good, if himſelf had not been ſeiſed, becauſe not heir, &c. *P.* 12 Ed. 3. *Counter-plea de Voucher* 71. *Shard* ſaid there that the younger ſon had not an anceſtor within

within the entendment of the Statute &c. and he may give the ſpeciall matter in evidence, *vide* 10. *Ed.*3. *fo.* 30.agreeing in all.

Action upon the Caſe.

I. *Where an Action of the Caſe lyeth againſt a Sheriff, his Officer or Bailiff, againſt an Attorney, Eſcheator, or other Officer, who doth embezil, forge &c.*

Vide F.n. br. and C. & quære, for the book ſeems to be that if the ſummoners, veyors and pernors, be dead the Writ doth not lye, ſee b. 6. by 1. 50.E.3. 16 *aſs* 10. *vide* 35 *h.* 6. 46, 4. *ſummons and veyors, and two of the ſummoners were dead, & one of the veyors, and no deceit did lye againſt the Sheriff, for it might be that they which were dead did ſummon the party.*

So 20 *Eliz. Dyer* 361. *If an Attorney by coven and fraud, without a warrant appear and confeſs an action or plead non ſum informatus* 10 E. 4. 9 *acc.*

June holds, that upon a recovery *in Precipe* againſt me by the Defendant, where I was not ſummoned, and the ſummoners, viewers and pernors are dead, I ſhall have an Action of the Caſe againſt the Sheriffe. *Quare* 1 *H.*6. *fol.*1. *Action upon the Caſe* 1. the book at large ſeems otherwiſe, but 6 H. 4. *fol.*3. agreeth, *vide* 26 *Book of aſſiſe, P.*48. *infra cap.*7.

In Treſpaſſe the Sheriff returns a *Non eſt inventus*, whereby an *alias capias* is ſued, the Defendant comes, and ſaith that he is ſufficient, and may be ſummoned, and prayes a writ againſt the Sheriffe to anſwer the King, and him for the falſity, *P.* 31 *Ed.*3 *Proceſs.* 55.

An Action of the Caſe againſt the Sheriffe, who returned 5. *exactus*, where he was but 4. *exactus* 9 *H.*6. *fol.*60. *and* 81.

Againſt the Sheriffes deputy, and the Attorney joyntly for embezelling a record &c. and a Writ of deceipt lyeth, and not againſt the Sheriffe for the imbezeling of his Deputy, *H.*19 *Hen.*6. *fol* 30.and a bill againſt the *Cuſtos brevium* for embezeling a Writ delivered unto him *M.*7 *H.*4. *fol.*6.

If an Attorney or any other ſue in my name, without my will I ſhall have this Action 7 *H.*6 *fol* 43. *Action upon the Caſe* 3 *Debt. vide Fitz. N. B.* 98.

Note, this difference was agreed *T.*15. *Car.* in *Thurſtons* Caſe, where he that hath cauſe of Action ſueth a man, and impriſoneth him, by reaſon of which his Creditors come upon him, and he loſe his Credit; thus no Action upon the Caſe will lye againſt the party who brings the Action, but where one commenceth a ſuit againſt another in the name of a vower, and without his privity; this is Maintenance and a licentious act, and an action upon the Caſe will lye againſt him for ſo doing.

A Bill againſt the Sheriffe in the Exchequer for quaſhing an eſſoyn of the Plaintiff in a Replevin, without the aſſent of the Suitors, but if

with

with their conſent &c. falſe Judgement hath lyen 26 *Book of Aſſiſe, Pla.* 45. *Bill* 12.

Where ſummons were returned in a Formedon, where it was not 26 *Book of Aſsiſe, pla.* 48 *Bill* 12. and this ſeems brought in the Exchequer upon his accompt, although that the party might have his action of deceipt, *Quære*, as at *Exigent*, if the party render himſelf and finds ſureties, and hath a *ſuperſedeas*, and yet the Sheriff will outlaw him, he ſhall have an action of deceipt, or an Action againſt the Sheriff in the Exchequer upon his accompt, *M.* 53 *Ed.* 3. *Error* 77.

Vid. 14 *b.* 7. 10. 21 *E.* 4 1. *and* 2. 34. *b.* 6. 6. *If the Sheriffe ſuffer a priſoner to go at liberty, before the Debt be ſatisfied Action upon the Caſe lies, yet the party may have debt againſt him, if he pleaſe.*

Action againſt the Eſcheator for returning an office contrary to that which was found before him by twelve men, and ſhewed the office and the return certain, and it lyeth becauſe here he is not Judge of Record, but officer of Record, *H.* 9. *Hen.* 6. *fol.* 60. *Action upon the Caſe* 6. ſo if he return an Office where none was found, 21 *Ed.* 4. *fol.* 27. *& nota*, this is Law, whether the office be found *virtute brevis* or *virtute officii*, 9 *H.* 6. &c.

Petition in Parliament, ſuppoſing a falſe Statute Staple, forged by the Defendant, and this was ſent into the Bench indorſed by writ to examine the Major and Clerk of the Staple, and the party, and although there is now no Major, yet if there were at the time &c. he ſhall be examined, and his examination ſtand of force, 17 *Ed.* 3. *fol* 49. *and ita quærela* 22.

Vide Fitzh. fol. 96. *B.* that deceipt lyeth for forging a Statute Staple.

If an Executor be made a Defendant, and he which was not the Executor confeſſe the Action as Executor, this Action lyeth againſt him, 9 *Ed.* 4. *fol.* 13. *deceipt* 21.

II. *Where this Action lyeth for diſturbing a man to ſue in the Kings Court, or in any other Court, or for procuring ſuit in the Kings Court or any other, or for not holding a Court.*

ACtion of the Caſe, that where he cometh by return of a Writ depending againſt him in the Bench, the Defendant had arreſted him *&c.* was abated for another defect in the Declaration, 7 *H.* 6. *fol.* 45. *Action upon the Caſe* 4. *&c.*

An Action againſt an Abbot who ſued him for Tythes in the Court Chriſtian, where he had Lands given him by his Anceſtor in recompence *&c.* before the memory *&c. M.* 8 *Ed.* 4. *fol.* 13. *Prohibition* 9.

He which had releaſed with warranty in certain Land, procured by colluſion one who had right to ſue for the Land, this Action lyeth, and in *warrantia Chartæ* the procurement was found, the Defendant here was outed and traverſed it, 34 *Ed.* 3. *fol.* 20. *deceipt* 28.

The Demandant in a Writ of Right in ancient Demeſne ſhall have Action *&c.* if the Lord will not hold a Court for malice *M.* 11 *Ed.* 2. *Action &c.*

on &c. 46. and if a Writ removed out of the ancient Demeſne, if the Bailiff yet proceed and give Judgement againſt him, it ſeems this Action lyeth, but there it was upon his departure in deſpite of the Court, 14 *Ed.* 3 *Action &c.* 39.

III. *Action upon the Caſe for falſity in bargaining, and where Warranty of a thing ſold is materiall.*

ACtion for this, *Quod vendidit vinum corruptum, & pro quadam pecuniæ ſumma, bonum & habilem Warrantizabat*, *Martin* and *Babington* ſaid, the Warranty is to no purpoſe, becauſe the Statute is, that no man ſhall ſell corrupt victuall *&c.* and *Martin* ſaid, that the Action lyeth againſt him who commands his ſervant to ſell corrupt victuall, and ſhall not traverſe the ſelling of it by himſelf, but where he did not command *&c.* 9 *H.* 6. *fol.* 53. *Action* &c. 5. 7. *H.* 4. 15. ſo *de panno ranco*, drink and meat corrupt *ibidem*, but *Fitzh. fol.* 94. otherwiſe, and ſaid, that where there is no warranty that he ſhall make his ſences Judges in the Caſe of wine, as well as where he hath bought a horſe, which hath an apparant malady, *fol.* 94. *Vid.* 7 E. 6. Dy. 75. upon a bargain of wax.

And *Bryan* ſaid, if a man ſell me twenty ſheep to kill, if they be corrupt, I ſhall not have an Action of deceit, if he did not warrant them *&c.* but if I ſell dead mutton which is corrupt, the Action lyeth without warranty, and this by the Statute that no man ſhall ſell corrupt victuall, *per Nele* 11 *Ed.* 4. 6. *deceipt* 23. ſo of corrupt Wine, 7 *H*4. *fol.* 15. *Action upon the Caſe* 27. *Fitz n br*, 98. *t. acc.* 5. *h.* 7. 42 *acc.*

If a man ſell me cloaths, and warrant every one to be of ſuch a length, where they are not, it hath been ſaid, that Action lyeth, becauſe the length cannot be judged by ſenſes, without collaterall means, but otherwiſe it is of the colour *&c.* the warranty is void, if the buyer had his eyes, by *Fairfax*: and *Chock* ſaid, if a ſtranger warrant a thing ſold by me, it is void: ſo of the ſervant who ſells for his Maſter, for the warranty ſhall be parcell of the Contract (but Covenant lyeth here, if he have done it) and if a man undertake to cure me, and he bid his ſervant, that he cure me not, the Action lyeth againſt the Maſter alone: and the warranty that ſuch ſeed ſhall grow, is void, but good that the ſeed is of ſuch a garden, or Countrey, for this the Bargainee could not know, 11 *Ed* 4. *fol.* 6, 7. *deceipt* 23. See *Littleton* ſaid, if I be abſent from the thing warranted, it is good, although it might be judged by ſenſes, *ibidem*, and 14 *H.* 6. *fol.* 22. *Action &c.* 9.

Action lieth againſt him who ſells a horſe with warranty *&c.* which he did know to be diſeaſed in his legs or eyes, *T.* 7 *Ri.* 2. *Ley.* 42.

A man ſells wood, ſhewing him parcell thereof, and warrants the reſt to be as good, if it be not, an Action lieth, 14 *H* 6. *fol.* 22. *Action &c.* 9.

A man ſelleth an hundred ſurples of Wool with warranty, the warranty

ranty, the Warranty is as well the cauſe of Action, as the corruption *&c.* and the warranty is traverſed, *H.* 19. *H.* 6. *fol.* 49. *Action &c.* 10.

Vid. 9 *h.*6. 53. 14 *h.*6. 24. 11 *E.*4. 8. *If the ſale be at one time and the warranty at another time, or place, the action will not lie*

Warranty made after the Contract is held void to have action of deceit, or this action, although it be by the ſame perſon, 5 *H.*7. *f.* 41. but ſee *Fitzh. f.*98. that if the warranty after be by deed, he hath remedy, but that is by Covenant &c.

He that hath taken my horſe wronfully, and ſelleth him as his own proper goods, and I or another for my debt take the horſe in Execution, this Action lyeth for the vendee, 42 *book of Aſs. pla.* 8. *Action &c.* 42.

If the vendee of corrupt wine, for good taſt and accept it, he ſhall not have this action, *P.*7 *H.*4. *f.* 15. *Action* &c. 27.

M. 21 *Iac. in B.R. It was adjudged if the Mannor Lord ſetteth forth his Tithes, and gives notice to the Parſon, and he will not take the Tithe away, an action upon the Caſe lies againſt him becauſe thereby the Land is endamaged.*

If a man buy hay of me in a Meadow, and do not carry it away in convenient time, ſo that it putrifie and corrupt my graſſe, I ſhall have this Action, *H.* 13 *H.*4. *Action upon the Caſe* 48.

If a man ſell me twenty quarters of malt, and convert the ſame to his own uſe, it is ſaid I ſhall have this Action, but *Fineux* ſaid, I ſhall have an Action of Detinue, *Quare* 20 *H.*7. *f.*9. and ſhall recover damages for the miſdemeanoour, *ibidem*, but if he ſell me corn in his Barn, and he convert the ſame to his own proper uſe, it is clear the Action lyeth, becauſe it is a thing certain, *Kinſmell*; but in the firſt it is not certain that I ſhall have the malt, ſo no property before the delivery, 20 H 7. *f.*9.

IV. *The form of a Writ in an Action, and the Pleas to the Writ.*

A Writ ſuppoſing that where a man cometh upon the return of a Writ in the Common Bench, the Defendant arreſts him in *London*, and declares that the Defendant arreſted him comming, &c. and he ſued a *habeas corpus*, and was diſcharged, and afterwards he comes back again into *L.* and the Defendant arreſts him again knowing &c. and he came for his evidences &c. and the Writ abated, becauſe it contained not all the matter, 7 H.6. *f.*45. *Action* &c. 4.

A Writ ſuppoſing that the King had granted to the Biſhop Franck pledge, *et aſſiſam panis*, in all his Lands and fees, and that he was ſeiſed of the Town of *Sar.* and was diſturbed &c. and the Writ was held naught, becauſe it did not ſuppoſe him to be ſeiſed of the Town at the time of the grant, although it were in the Declaration, for the Writ ſhall be as certain as the Declaration, ſave in the day and quantity of the Land, *per Priſot, M.*38 H.6. *f.*9. *Action* &c. 14. *infra c.* 10. 11 *Hen.*4.

A Writ was, that *pro quadam pecuniæ ſumma vendidit*, and the certain ſum was in the Declaration, and therefore held good, *& Warrantizabat habilem* is not falſe Latine, 9 H.6. *f.* 53. *Action* &c. 15.

A Writ ſuppoſing a Retainer *pro quadam pecuniæ ſumma*, good without

out ſhewing what ſumme, becauſe the quantity is not materiall to maintain the action, 11 *H.6. f.*18. *Action &c.* 7. *plus infra* 16 *H.* 6. and to this ſeems to agree 3 *H.6. fol.*36. *and* 37. *Rolſ* pleaded over, yet without any ſumme he took upon him and covenanted void, *ibidem.*

A Writ ſuppoſing an *Aſſumpſit* at *London*, the Defendant ſhall ſay *Aſſumpſit* at 9. without that that at *London*, good to the Writ., 19 *H. 6.fol.* 49. *Action &c.* 10. agreeing, with that *viz* upon ſelling and warranting ſuppoſed in one County, when it was in another, 14 *H.6 fol.* 22. *Action &c.* 9.

Another Writ depending for the ſame Treſpaſs in the Common Bench, is no plea to the Writ *&c H.7 H* 4 *fol.*44. *Action &c.*26.

Three Joynt-Tenants having a way over the Land of two men, who are ſeverall Tenants, and ploughed their Land ſeverally, ſo that the way is impaired, the three bring this Action againſt them both, ſuppoſing that they had a way over their Land, and the Writ was held good, 2 *Hen.* 4. *fol.* 11. *Action &c.* 24.

A Writ was brought that whereas, *habeat chimin ad Eccleſiam ratione tenuræ ſuæ* &c: that the Defendant *quendam murum levavit per quem murum chimin*, &c. here non *potuit* held good, although at firſt is *habet*, and in the percloſe, *habere non poteſt* (*videntur contraria*) and it was excepted againſt, becauſe *ratione tenuræ* might be upon a Leaſe for years, and then he ſhould have another form of the Writ, removing the Seiſin of the Leſſor and Leſſee, 33 *H.* 6.26.

Vid. 11 *b.*4. 26.4.*E.*4.2. 2 *b.*4.11. 14 *b.*8.2. *If in this caſe the Action lyeth, or Aſſiſe of Nuſance.*

An Action againſt him who was reteined to buy a Mannor for me, is well brought, where the deceipt and reteiner &c. although that the Mannor be in another County, but the Writ abated, becauſe it ſuppoſed a reteiner &c. and declared that the Defendant bought the Mannor for himſelf, and not for the Plaintiff: but in debt, accompt forgery, the Writ ſhall be generall, the Declaration ſhall be ſpeciall, *M.* 16 *H.* 6. *Action* &c.44.

The Writ was that the King had granted him certain Land in Ward, and that the Defendant had levyed ſuch a ſumme in certain Lands of the Ward, belonging to the Plaintiff, it ſeems it abated, becauſe he ſhewed not in what Lands, but by *Fitzh. Norton* anſwered that this appeared in the Declaration *P.* 11 *Hen.* 4. *fol.*64. *Action* &c.29. *ſupra Action.* 38 *H.6. Caſe*, 2.

A Writ brought and declared upon an undertaking for curing a horſe, and good, and this Writ ſhall be *contra pacem*, 43 *Ed.*3. *fol.* 33. 45 *Ed.*3. *fol.*17-27. *Book of Aſs. pla.*56. but ſee *Fitzh. fol.* 29. *E.* That this Action ſhall conclude *contra pacem.*

A Writ brought for not encloſing Land in one County, by reaſon of Land in another County, good and well brought, where the Cloſe which &c. *Hill* 11 *Ri.*2. *Action* &c.36. But covenanting in *London* to cure in the Strond, and he impaired in the Strond, and cured not, the Writ good in the one or the other, at the Will of the Plaintiff, *per Thirning*, and the iſſue is, the *venir.* ſhall be of the one or the other, *P.* 11 *Ri.* 2. *Action* &c. 37.

A Writ claiming an eſtray by Franchiſe within his Mannor, and claims it not as appendant, nor by grant, and good. Otherwiſe in a *Quo Warranto*. *Quare*, for it ſhall be intended to be appendant to the Mannor, although *Stouff* ſaid it might be claimed by uſage, &c. but he was compelled to anſwer, that the Defendant was ſeiſed of the moyety of the Mannor with the ſecond ſtray, *M.*13 *Ed.*3. 3. *Writ* 674.

A Writ for ſtopping an hole in ſuch a water, at his weares in *E.* and ſheweth not whether the hole were in the Soil of the Plaintiff or of the Defendant, and yet good, but being *vi & armis*, it was abated by the ſhewing of the Defendant that it was in his ſoil, 31 *Ed.* 3. *Action &c.* 38 *Fitzh. fol.* 46. H.

A writ brought, and preſcribeth to have ſtrayes in his Mannor, and that he ſeiſed three beaſts for ſtray, &c. and the Defendant took them, and did not ſay where he took them, and held good, for it ſhall be intended to be in the ſame place, and he ſuppoſe an aſſault made there, and there ſhall be but one *ib.* in the writ, 31 *Ed.*3. *Writ* 333.

Declares that by reaſon of Land, he ought to repair a wall, and ſets not down the quantity of the Land, yet good, 29 *Ed.*3. *fol.*32. *Action* &c. 50.

The writ was, *Quod reparare debet aquam in* C. and did not, whereby ſo much Land adjoyning was ſurrounded, and ſaid not in what Town the Land adjoyning is, but the word *adjoyning* is as much in effect as *(there)* ſo it ſhall be intended in the ſame Town *P.* 29 *Ed.*3. *f.*32. *Action* &c. 50. *vide Diviſion* 10.

V. *Barre with traverſe to the point of the Writ, and Barre without traverſe.*

WHere one declares of wine ſold, it not being good, it is no barre to ſay that it was ſufficient and good, without traverſing, without that that it was corrupt, and if my ſervant ſold ſuch wine without my commandement, I ſhall ſay generally that I ſold it not, and I ſhall not ſay, that my ſervant ſold it without my commandement &c. without that, that I ſold it in any other manner &c. *M.*9 *H.*6. *f.*53.

Action againſt an Abbot, alledged Preſcription, that he ſhall find a Chaplain four times in the week in his Mannor, and not any Seiſin of Maſſes, becauſe it is not manuel, but he ought to alledge the times certain when the Maſſes ſhould be. And it is no plea to the writ; that the Abbot holds by ſuch ſervice; ſo he ought to have a *Ceſs.* if he traverſe not the Preſcription, becauſe it may be, that he ought to find two Prieſts, *H.*22 *H.*6. *f.*46. *Action* &c. 12.

One declares to have a Leet with all profits, fines and amerciaments, if the Defendant ſhew that he hath uſed to have the amerciaments of his ſervants there, he ſhall traverſe without that, that the Plaintiff had all the

the profit &c. and ſhal not ſay without that, that he had a Leet in any other manner, and if the Defendant being amerced for not appearing, alledge that he hath uſed to be warned by fifteen dayes, &c. here the traverſe ſhall come of the Plaintiff, (*ſcil.*) that he was lawfully warned, and if the Defendant alledge uſe to diſturb, the Plantiff ſhall traverſe this alſo if he will, and in theſe caſes the Defendant ſhall not traverſe, *M.* 38. H. 6. *f.* 16. action *&c.* 15.

Action for claiming and lying in wait to take the Plaintiff for his Villain. It is a good bar that the Plantiff is Villain regardant to *R. &c.* and that he as ſervant to *R.* lay in wait &c. without that that he claimed him as his Villain, and ſhall not traverſe generally the point of the Writ, 2. *Ed.* 4. *f.* 5. action *&c.* 16. *Vide B Action ſur la caſe* 9. 17. E. 4. 3. 15. E. 4 32. *acc.*

Action brought for corrupt Wine ſold, the Defendant ſaid that he accepted it by his taſte; the Plaintiff ſaid, that the acception was upon condition, that it ſhould indure until *&c.* and it not endure, the Defendant ſaid that he did accept it without that that there was any ſuch condition *&c. P.* 7. H. 4. *f.* 15. action &c. 27.

A Writ againſt a Farrier for pricking a horſe, he ſaid that he did it well without that he pricked him, 46. *Ed.* 3. *f.* 19. action &c. 35. *Vide F. N. B.* 14. H. 6 *Action ſur le caſe* 8 *by June* 19. H. 6. 47. *If a Farrier take upon him to cure a horſe, and by negligence or inſufficient Medicines kil him, this action lies*

An action for not repairing an hedge which he ought to do &c. the Defendant ſaid, that there are ſtraggling Buſhes, without that that there was at any time a hedge there, and good, H. 11. *R.* 2. action &c. 36.

An action for ſelling me a horſe which was a ſtrangers, the Defendant ſaid, that he bought him of a ſtranger, without that that it was to a ſtranger at the time of the ſelling to the Plaintiff, 42. *Aſſiſe P.* 8. action &c. 42.

An action for a houſe burned by the negligence of the Defendant, he ſaith that a ſtranger entred into his hoſtry in deſpite of him, and by his negligence &c. without that that by his not ſafe keeping of his fire &c. Said that this is double, but the traverſe hath made it good &c. H. 3. H. 6. Double 31.

VI. *Where an Action, &c. lieth againſt him who is retained to do a thing and miſdoeth it; or takes upon him to do, and doth it amiſs.*

ACtion for this, that he retained him for a certain ſum of money, to be of his Councel, for the obtaining of ſuch Lands to him and his heires, for a Leaſe for years *&c.* and that the Defendant took upon him to do it, and in deceit of him, diſcovered his Councel, and by his Councel one *R.* hath purchaſed it for years, and though the Retainer and *Aſſumpſit* be double, yet he ſaith that this Action is as a Covenant, and

ſhall ariſe upon the whole matter and bargain as it was, and here the Retainer being traverſed, ſhall make an end of all. *H.* 11. *H.* 6. *f.* 18. *Action &c.* 7.

If a man take upon him for money, to travel for me for a Leaſe, and he labour for himſelfe, this Action lieth for miſdoing. As if he promiſe to enfeoff me, and enfeoff another, and the ſum was put into the Declaration. 3. *H.* 4. *fol.* 14. *Action &c.* 20. See, It is ſaid, that upon ſuch retainer and purchaſe for himſelfe, an Action of deceit lieth. 20. *H* 6. *f.* 27. but *M.* 16. H. 6. *Action &c.* 44. is agreed, 13. H. 7. and here the aſſumption is traverſable. 3. H. 7. *f.* 14.

In Action upon an *Aſſumpſit* to cure an horſe at *L.* which he did not, it is a good plea, that he aſſumed at *O.* which he hath done, without that that he aſſumed at *L.* For it may be that after the curing at *O.* he might come diſeaſed again at *L.* at which time of good will he applied medicines to him, after which the horſe died. And if I give one counſel to give a a medicine to an horſe, which is given him, and he die, no action lieth againſt me, if I take not upon me to cure him, and traverſe it *&c.* As if I have a malady in my hand, and he put a medicine to my heel, for my hand no action lieth, if he tooke nothing; and for that he did negligently apply a medicine, is nothing to the purpoſe, without taking, *per Newton* and *Paſton* H. 19. H. 6. *f.* 49. *Action* upon the caſe *&c.* 10. and the Writ ought to contain the place of undertaking *&c.* 48. *Ed.* 3. *f.* 6. Writ 627. &c.

But ſee 43. *Ed.* 3. *f.* 33. action &c. 33. In an action againſt a Chirurgion for that his Patient died in the default of the medicine; he ſaid, that he cured him as well as he could, without that that he did impaire him. and *Thorp* ſaid, that a man hath been indicted, that he kild a man through the default of his medicine. It ſeems the matter ſhall be tried by Chirurgions, whether the Medicine were contrary or hurtfull to the Diſeaſe. And *Quære*, if there be not a difference between a common Chirurgion, and another man who gives Phyſick, and is no Chirurgion *&c.*

If a Chyrurgion or Smith *&c.* warrant to cure, and doth what he can or ought, and doth not cure, yet no action lieth againſt him. 48. *Ed.* 3. *fol.* 6.

If a man be retained to buy Land of *J. S.* for me and *J. S.* die, he is diſcharged, and may now purchaſe to himſelfe *per Cotton M.* 16. H. 6 action, *&c.* 44.

Vide 14. *b.* 6. *Action ſur le caſe* 8. *by June*

An action againſt a Smith for pricking a Horſe, without undertaking, *&c. Fitzh. fo.* 94. and he traverſed, without that he pricked him *&c.* 46. *Ed.* 3. *f.* 19. *action* 35.

He which took upon him to do a cure for money (for ſo was the Declaration) gave a contrary medicine, and did hurt, and afterwards applied good medicine and cured, yet an action doth lie, *et ſic è contra P.* 11, *R.* 2. *action &c.* 37.

If

If he which takes upon him to carry my Horſe over the River, ſurcharge the Boat ſo that he periſh, I ſhall have this action for this miſ doing, 22. *Aſſ. P.* 41. *action &c.* 40.

So if a Carter take upon him to carry glaſſes, and he break them, this action lieth. 2 H. 7. *f.* 11.

Note in all caſes of taking, if it be not for any wages, no action of the caſe lieth, *Quia nudum pactum*: But it ſeemeth if he had a Deed, action of Covenant lieth, 3. H. 6. *f.* 36.

VII. *Where Action lieth for non-feaſance, or of the thing which is grounded on Covenant.*

DEclares upon a Covenant to make a ſtranger releaſe to the Plaintiff, which he did not, action lieth for non-feaſance: and if a Smith take upon him to ſhooe my horſe, the action lies as well as if he had pricked him *&c.* 14. H. 6. *f.* 18. action *&c.* 8. So for building or covering a houſe, if he covenant and do it not: So to plow my Land, and doth it not, or doth it in a time not ſeaſonable, where he might have done it in a ſeaſonable time, 14 H. 6. *f.* 18. 3. H 6. *f.* 36. To ſet up a Mill and did not. But if my ſervant denie to go with my Cart, this is mis-feaſance, *ibid.*

And note, although I have a Deed of Covenant, ſo that the Covenant lieth for non-feaſance, yet for miſ-feaſance I ſhall have this action, 20. H. 6. *f.* 36.

It was adjudged that this Action lieth not for not building of an Houſe. *Hulls* ſaid, he might have his action upon the Statute of Labourers *M.* 2. H. 4. *f.* 3. action &c. 23. and by *Vavaſour*, 3 H. 7. *f.* 14. action &c. 20. But note, the Judgement was becauſe it founded in covenant, and ſhewed none, but it is not law to any intent; for, for not doing the Writ lieth well by *Fineux*, who ſaid, if a man ſell me his Land for 20l. and I pay him, and he will not make me an eſtate, this action lieth, and I ſhall not be driven to a *ſubpœna M.* 21. H. 7. *f.* 41. action &c. 45.

It lieth againſt him who by preſcription ought to finde a Chaplain three dayes in a week in my Mannor, and doth not, 22. H 6. *f.* 46. action *&c.* 12.

If a man by reaſon of his Mill ought to repair a Bridge, by which I have a way, by reaſon of my Mannor, to carry victuals and other neceſſaries, and he do it not, ſo that *&c.* I ſhall have this action. So if my Land be ſurrounded by a Dike not repaired, which he ought &c. *T.* 11. H. 4 *f.* 82. action &c. 30. 45. *Ed.* 3. *f.* 17. action &c. 34. So if he repaire not his incloſure whereby my Land is depaſtured &c. H. 11. *Ric.* 2. action &c. 36. So for not repairing a Wall or Bank of a River, whereby my Land is ſurrounded. But in theſe caſes the Plaintiff muſt ſuppoſe ſpeciall damages to himſelfe,

11. *b.* 2. *action action ſur le caſe*, 36 37.

himſelf, as it ſeems, 29 *Ed.3.fol.32. Action&c.* 50. and upon a common Nuſance made, he that hath ſpeciall Nuſance ſhall have this Action, 27 *H.* 8. *f.*27.7 *H.* 4 *f.*8. *Briefe* 226.

It is ſufficient for a Chirurgion or a Smith &c. that he did what he could, and it ſeems that this is iſſuable 48 *Ed.* 3. *fol.*6. *per Chandiſh.*

VIII. *Action &c. againſt him that maketh or raiſeth any thing to my prejudice, and where upon a Nuſance done, and where this Action or Aſſiſe of Novel diſſeiſin of inheritance.*

THE Writ ſuppoſeth, that they had ten acres of Meadow, and a way to it over three acres of the Defendants, whereof they were diſturbed, and this was by plowing of the Land &c. *Marckham*, If a man raiſe a Mill or a Dike croſſe my way, a Nuſance lieth, and if he plow my Common, I ſhall have an Aſſiſe of Novel diſſeiſin: So here though it be ſaid, that all the way is not ſtopped but impaired. And if a man turn the water from my Mill, ſo that it cannot grind ſo much &c. I ſhall have an Aſſiſe, not this Action, and if I have Eſtovers, and he cut all the Wood, I ſhall have a *Quo minus* (*vide* 4. *Ed.*4.*f.*2. that this *Quo minus* is an Action upon the Caſe) and by *Thirn* If I pull down the Nuſance done to my Land, I ſhall not have an Action upon the Caſe, becauſe none was given, and the Writ abated, *M.*2 *H.*4 *fol.*11. *Action &c.* 24 but *Priſot* ſaid, that for ſtraitning of a way, an Action of the Caſe lyeth *Quare arctavit*, and if all the way be ſtopped this Action lyeth, and if by the terr-tenant &c. Aſſiſe lyeth, 33 *H.*6.*fol.* 26. *Action* 31. *vide* accordingly for water ſtopped, and not all, this Action lyeth, and if all be ſtopped, an Aſſiſe of Nuſance lyeth, 14 H. 8.*f.*38.&c.

*Vid.*27 *h.*8.31. 27 *h.*6.27. 10 *h.*7.21. *Vid.*21 *h.*7. 29.30. *Vid.*4.*part.* 89. *Lutterels Caſe.*

8 *Eliz. Dyer* 250.27 *h.*8. 27.28 E.3.*br. Nuſance* 11: *Vid. M.*19 *Eliz.* *in B.K. Giles Caſe adjudged accordingly.*

If a man grants me yearly hay and ſtraw for two kine in the winter, in his houſe for life, and I am ſeiſed and diſſeiſed, I ſhall have this Action, and not an aſſiſe *per Moyl* and *Littleton*, *P.*4 *Ed.*4.*f.*2. *Action* &c17. this was the opinion of the Juſtices there.

15 *Eliz* *Dyer* 320.*c.*5.*part.* 1.&6.

Action for this, that he is a Bailiff of an hundred, and ought to have of every Brewer which breweth, which ſelleth three gallons of the beſt Ale for 7 *d.* &c. and he brought the Action againſt many, and preſcribed in it, and it was holden, that for this he could not have an Aſſiſe, becauſe he had not the Freehold, but the uſe of the office for a time, and therefore this Action did lie, *Trin.* 19 *R.*2. *Action* &c.51.

Action brought for ſetting up a horſe mill, whereby the Tenants and reſiants do grind with the Defendant, who time out of mind &c. ought to grind with the Plaintiffe, and it was holden, that there was no cauſe of Action againſt the Defendant, 22 *H.* 6. *f.* 14. yet to ſet up a fair, in nuſance of my fair, is good cauſe of Action, and it is inquirable at the Sheriffes turn &c.

And

And if one ſtop my light, Nuſans lieth &c. 22 H 6. *f.* 14. *Action* &c. 11. and agreed that no action for the ſetting up of the Mill lieth, 11 H. 4. *f.* 47. unleſſe it hinder my water, or in ſuch a manner annoy me, or if it diſturb my cuſtomers for coming to my Mill, Fair or Market, then this Action lieth, 11 H.4. *f.* 45. 9 H.6. *f.* 45. 41 *Ed.* 3. *f.* 24.

A Schoolmaſter brought an Action for this, That whereas the Collation of Schollers to learn Grammar belonged to the Abbot, who appointed him &c. The Defendant had there ſet up a School, whereby his Schollers went thither, &c. this was *damnum ſine injuria*, and ſo no cauſe of Action, which it had been, if it had been an Univerſity incorporate, *per Hanc* &c. H. 11. H. 4. *f.* 47. *Action &c.* 28.

An Action upon the Caſe for not making a Bridge, Dike &c. but for breaking a Bridge, or ſtopping the water, ſo that I loſe my profit, Nuſans lieth, 11 H.4. *f.* 82. *and* 14 H.8. *f.* 38.

If a man in his own ground levy a Nuſance to my ground, I ſhall have a Nuſance or this Action, as it ſeemeth, but not an aſſiſe of *Novel diſſeiſin*, nor Treſpaſſe *vi & armis*, but where the Nuſance is in my ground, *P.* 31 *Ed.* 3. *Action* &c. 38.

Two Joynt-Tenants have a gutter, which they ought to repair, and the one of them breaks it, ſo that the other is dampnified by the breaking thereof, he ſhall have this Action, H. 2 H. 5 *f.* 3. *Action* &c. 22.

So upon a Lime Kiln ſet up, and the place ſpoiled, one Tenant in common ſhall have this Action againſt the other, 13 H.7. *f.* 26.

IX. *Where an Action &c. lieth againſt him who diſturbeth me by hindring things to come to my Fair, or from diſtreining.*

IF a Miller will not ſuffer me to grind my corn without payment of Toll where I ought to grind Toll-free, I ſhall have this Action, and if he take Toll of me, I ſhall have an Action of Treſpaſſe *Quare vi et armis*, or I may have a *Quod permittat* againſt his Maſter, *per Thorp*, 41 *Ed.* 3. *f.* 24. *Action* &c. 31 *Fitzh.* thinks that I ſhall have a generall Treſpaſſe for the Toll taken, or an action upon the Caſe, or a Writ to the officer out of the Chancery to ſuffer me to grind, *f.* 94. *F.* and ſee 29 *Ed.* 3. *f.* 18. 5. Treſpaſſe, *vi et armis*, for hindering people for coming to a Fair, whereby he doth loſe his Toll &c. *quere.*

Action upon the Caſe lyeth for taking Toll of my Tenants in a Fair, where they ought to be Toll-free, 43 *Ed.* 3. *fol.* 29. *Action* &c. 3. *Fitzh. fol.* 94.

Action brought and lyeth, for that he diſturbed one from holding a Leet in his Mannor, and for diſturbing his Servants from gathering tithes, or for diſturbing people from coming to do their offring at his Chappel, & for taking his Servant out of his ſervice, three writs in *Fitzh. fol.* 94 H 19.

Ri. 2. *action &c.* 52. So if one diſturb my ſervant in gathering my toll in the market, *&c.* and ſee the form of the Writ and Declaration where one diſturbs *Diviſion* 10. *cap.* 4. 9 H. 6. *f.* 45. *Count.* 18. and the Writ was *Vi et armis*, ſo it ſeems a general Treſpaſs, although the book ſpeaks of an action of the caſe *&c.*

If I ought to have amends for the breach of the peace within ſuch a Fee, & a ſtranger diſtrains the Tenants for this amends, if they be Free-holders, I may diſtrain them, and ſhall not have this action, for it is no diſturbance to me, but if the diſtreſs were demanded of his Villains, there the action would well ly, 13. *Ed.* 1. *Leete* 12. *vide* 43 *Ed.* 3. *fol.* 29. 48 *Ed.* 3. *f.* 17. Covenant brought by a Mayor and Commonalty for taking toll of one of the commonalty, was good, although the party might have his action of Treſpaſs, 48 *Ed* 3. *fol.* 17.

X. *Declaration in an Action upon the Caſe.*

A Declaration to find a Chaplain to ſay Maſſe at certain dayes, how it ſhall be, *Diviſ.* 5. *cap.* 3. 22. *H.* 6.

A Declaration for burning a houſe by his negligence, 3 *H.* 6. 2 *H.* 4. *fol.* 18. *N. parte* 13. *ac.*

A Declaration to have a Way appendant to his Mannor over ſuch Bridge, and claimeth not to carry *&c.* from his Free-hold, nor from any other certain place, and good, 11. *H.* 4. *fol.* 82. *action* 30.

A Writ, ſuppoſing the Defendant did diſturb him to hold a Faire by three dayes, and declares by two whole dayes, and the afternoon of one day at firſt, and the forenoon of another day at the end, and holden good, becauſe it was upon the matter three dayes, *P.* 16. *Ed.* 2. *action &c.* 47

A Declaration upon diſturbing one in taking Toll of every Wayne which commeth by preſcription, good, *non ſic*, if he claim this as parcel of the Faire, for Toll is not but of things ſold, if not by cuſtome; and a Declaration of ſeiſin of a Fair, *cum omnibus ad hujuſmodi feriam ſpectantibus*, is good, and becauſe the Writ was brought for diſturbing him in the taking of Toll of *T.* for a horſe bought, ſo as it was of a thing certain, it ought to be ſet down of whom *T.* bought the ſame. But if the action were generally conceived for not ſuffering the people to come to his Fair, this is good without ſetting down any thing bought or ſold *&c.* and the whole was abated, becauſe the Declaration was ill in part, *viz.* becauſe it was not ſet down of whom he bought the horſe, 9. *H.* 6. *f.* 45. *Count.* 18. 30, *Aſſ.* 20 *H.* 7. *fol.* 1.

XI. *Where*

XI. *Where action &c. lieth for ſlander, or defamation, or for claiming one as his Villaine, and where damage without injury.*

IT was ſaid that action lieth not for claiming one as a Villain, and ſo publiſhing, and lying in wait, without ſaying over and above, *Quod in tantis inſultibus, & affraiis circa negotia ſua ire non eſt auſus. P. 2 Ed. 4. fol. 5. action &c. 16 per Lacon* it ſeems that this allegation over is not traverſable.

An action was brought for calling a Judge of the Common Bench, Traytor, Thiefe, and Robber, in the hearing of the Treaſurer *&c.* good, and it was tried by the Attornies of the Bench and Exchequer, 30. *Book of Aſſiſe, p. 19. action &c.* 41. ſee the Declaration there.

If one ſay to me, that another comes after me to kill me, by reaſon whereof I flye away ſo haſtily that I kill my horſe, no action lieth upon this, *quia damnum ſine injuria*: but if in truth one did lie in wait to beat me going to Weſtminſter, ſo that I dare not go thither about my buſineſs, action lieth *per Jenny*, but of a doubt without cauſe, no action 17 *Ed.* 4. *fol.* 4. and *Fairfax* ſaid there, that a man ſhall have an action for threatning to beat him by a writing if he came out of his houſe, although he ſpeak not to him. But *Nedham* and *Billing.* Juſtices ſeemed to hold, that for claiming one as a Villain, and for lying in wait, ſo that he dares not *&c.* no action lyeth. They alſo ſaid, that no action lieth for calling me Thiefe or Traytor, but they would adviſe thereon, 17 *Ed.* 4. *fol.* 4.

No action lieth for calling a man Heretick, becauſe it is triable only by the ſpiritual Law: otherwiſe of bawdry, but adultery ſhall be tried there onely, but to call me Thiefe or Traytor, action lieth here, 27 *H.* 8. *fol.* 14.

In an action for calling one Thiefe, he declared of ſuch a Felony certain, 27. *H.* 8 *fol.* 11. and 26 *H.* 8 *fol.* 9. But *Walſhe* Juſtice ſaid, that action lay for calling one Traytor, without any ſuch ſpecialty alledged, and 30. *Book of Aſſiſe P.* 19. and it is not excuſe to call one Thiefe, becauſe the common fame is ſuch, 26 *H.* 8. *fol.* 9.

30. *Aſs.* 19. *Vide* 28 *b.* 8. *Aſs.* 26. 44 *Eliz. Dobbins et Franklyns caſe C.* 4. *part.* 16.

It was agreed in the Kings Bench, *M.* 9 *Eliz. Regine*, that an action lieth not againſt him that cals me Thiefe upon the Report of another. As if he ſaid that *J. S.* ſaid that I am a Thiefe, and ſtole, *&c.*

XII. *Action upon Baylement, and where againſt the firſt Bayle, and whether he ſhall have this Action or detinue upon lending or Contract.*

ACtion for this, that he delivered his Goods to *T.* who delivered them to the Defendant to the uſe of the Plaintiff, and the Defendant had them. *Bryan.* If I deliver my horſe to a Smith to ſhooe him, and he delivers him to another Smith who pricks him, I ſhall have my action, but not againſt the ſecond Smith, *ſic hic*: but the other Juſtices were of a contrary opinion, 12 *Ed.*4. *fol.*13. *Action upon the caſe* 19.

Action upon the caſe brought upon delivery of a horſe for ſafe keeping for a certain ſum, and he killed him *&c.* The Defendant ſaid, that at another time the Plaintiff brought his action of detinue for the ſame horſe, where he waged his Law, whereby he ſhall be barred now by *Littl.* and *Jenney, Catesby contra* 12 *Ed.*4 *fol.*13. *Eſtoppel.* 78.

Tenant for life, the remainder in tale, if the Tenant burn the Deed being delivered unto him, he in the Remainder ſhall have his action upon the caſe, 9 *Ed.*4. *fol.* 52. *per Brian Detinue*, 27.

And note that upon baylment of a horſe, detinue lieth, but for miſuſing him, action of the caſe, and *Brian* ſeemed to hold, that to break a Ring of gold, which he had given to keep, the property not being altered, ſo no action upon the caſe, but of detinue lieth. For he may recover the ſame thing. *Catesby*, he may have the one or the other action; but if I deliver cloath, and he cut it, and make Garments &c. now the action of the caſe lieth, becauſe he cannot recover the ſame thing *per Choke.* And *Brian* took it for a Rule, that one ſhall not have an action upon the caſe, where he may recover the ſame thing &c. 18 *Ed.* 4. *fol.*23.

20 *b.* 7 9.
11 *Ed* 4 8.
21 *E.* 4. 67.
2 *b.* 7. 11. *acc.*

Where ſheep are delivered to keep, and he ſuffereth them to be drowned by negligence. So where one delivers a Cheſt to keep, which is loſt or broken, this action lieth *per Townſend, H.*2 *H.*7. *fol.*11. So if I do deliver a man a horſe to ride to Yorke, and he ride him further, this action lieth, *ibidem.*

C. 5. *part.* 13. *the Counteſſe of Salops Caſe.*
12 *E.*
18 *E.* 4. 27.

Action brought againſt one for breaking of a Bag or Cheſt with money delivered unto him to re-deliver, or deliver to his Teſtator &c. and it was broken by the Defendant, and he converted the money to his own uſe. It is ſufficient for the Defendant to traverſe the converſion to his own uſe, *M.*20 *H.*7. *fol.*4.

If I deliver money to my ſervant to diſcharge an Obligation, which he doth not, ſo as the Obligation is forfeit, although here an action of detinue or account lieth, yet I ſhal have alſo this action by reaſon of the forfeiture, *per Frowick &c. Quære*, if he ſhall not recover damages for the miſdemeanor in the detinue brought *&c. M.* 20 *H.*7 *fol.* 9.

Detinue

Detinue lyeth not for Toll, becauſe there is no contract, 20 *H.7.fol.1.* but for ſelling without paying Toll, Action upon the Caſe lyeth, *P.7 Hen. 4.f.45. Action &c.26.*

XIII. *Action upon the Caſe for menacing to diſtrein my Tenants or my ſelf, or my men, or villains.*

Littleton ſaith, that if a man ſaith to me, that if I will not pay him 20 l. he will take my goods, and I pay him for fear, yet he ſhall be endicted as an extortioner, and I ſhall have an Action upon the Caſe; but if a man take my beaſts untill I make a Fine, I ſhall have an action of Treſpaſſe &c. *Quouſque finem &c. Danby agrees*, and if threatned to be beaten, an action of Battery, *M.7 Ed.4.fol.21. Barre* 91. See the diverſity between this Caſe and 17 *Ed.4.*

Action lyeth not for menacing my Tenants at will, if I do not alſo ſuppoſe, that thereby they are departed &c. 9 *H.6.fol.8. Action &c.21.* but to threaten to ſue them by Law for his Right, is no cauſe of Action, but may be well menaced, *&c.* if it be not of life or member, 9 *H.7.fol.8.* 21 *H.6. fol.29.*

An Action declaring of a battery of his villains, ſo that they departed from his Lands, H.31 *Ed.3. Brief* 333.

XIV. *Where an Action of the Caſe lyeth for burning a houſe.*

IT is the Law of the Land, and the common Cuſtome of the Realm, (and he muſt declare) that every man ſhall keep his fire, and that he ſhall anſwer for the negligence of the ſervant or hoſteler, and *Marckham* was of opinion, that I ſhall anſwer for him that comes into my houſe by my leave or knowledge, or into my Hoſtry, but if he come in againſt my will and ſet fire on my houſe, ſo that it and other houſes be burned, there lies no Action againſt me, 2 H.4.*f.*18. *Action* &c.25. it was granted, that if a ſtranger come into my Hoſtry, and hath fire, and by his negligence burn &c. that this Action lyeth not, as it doth if he enter againſt my will, H.3 H.6.*f. Action &c.* 31.

Upon a ſuddden fire in my houſe, kindled without any cauſe known, by which my Neighbours houſe is burned, there lyeth no Action againſt me, 42 *Book of aſſiſe, P.8. Action* &c.43.

XV. *Where an Action of the Caſe lyeth, and not Treſpaſſe* vi & armis, *becauſe the Defendant came to the thing by the act of the party, or lawfull act, and where it lyeth, becauſe the Plaintiff had not an eſtate to maintain his Action for recovery of the Land or the thing it ſelf.*

IF Tenant by *Elegit* held the Land after the tender of the money, and cut trees, this action lyeth, for it lyeth not in accompt, and Treſpaſſe lyeth not becauſe he in by Title, 21 *Ed.*3.*f.*16.

Vide C 5. *part.* 13 *the Counteſs of Salops Caſe.* For waſt done by Tenant at will, action upon the Caſe lieth *per Brown*, 14 *Hen.*8.*f.*12 &c. *vide Littleton* in chapter Tenant at will, that Treſpaſſe lyeth.

2 *h* 6 27. F. N. B. 36. F. *acc.* Action lyeth for an Incumbent who is admitted and inſtituted againſt the Patron who preſented him, and the Archdeacon, if he will not induct him as another is inducted before him, *Tr.*26 H.8.*f.*3:

If the Leſſor ouſte the Executors of the Leſſee of their term, they ſhall have a ſpeciall Action upon the Caſe, *per Fitzh.f.*92.*G.*

XVI. *Where an Action of Caſe ſhall lye for taking an eſtray.*

FOr taking an Eſtray, which I have ſeiſed within my Mannor, Action upon the Caſe lyeth, *H.* 31 *Ed.* 3. *briefe* 333. *M.* 13 *Ed.* 3. *Writ* 674.

Aſsiſe.

I. *Where an aſſiſe ſhall be awarded, and where not, and where at large, and where upon the Title.*

VPon a Releaſe pleaded in an Aſſiſe with witneſſes, this being denied, Proceſſe was awarded againſt the witneſſes, and at the day the Tenant came not, no continuance was made although the Plaintiff prayed it, but the Aſſiſe awarded in point of Aſſiſe, without regard had to the Plea of the Tenant, or to the Proceſſe againſt the witneſſes, 8 *Book of Aſſiſe P.* 9. *Continuance* 9.

So

So if upon an Aſſiſe adjourned for forrein releaſe pleaded, the Tenant maketh default, the Aſſiſe ſhall be remanded to inquire at large, for upon the matter the ouſter is confeſſed, 11 *Ri.*2. *Aſſiſe* 72. And although the Plaintiffe would releaſe the damages to have Judgement, yet he ſhall not have it without enquiry at large, *Tr.*30 *Ed.*3. *F. Aſs.* 100. but if the releaſe had been found falſe, then releaſing damages he ſhould have Judgement, or otherwiſe a Writ to inquire of damages. *P.*22 *Ed* 3. *F. Aſſiſe* 125. *and* 8 *Book of Aſſiſe p.*15. *Aſs*, 190. *Diviſ.*22. *&* *Diviſ.*50. *and* 34 *temp. Ed.*1.

In an Aſſiſe the Tenant ſaid that *A.* recovered againſt him in a *dum fuit infra ætatem* of an elder date by a *nihil dicit*, and prayed that his plea might be entred, yet the Aſſiſe was awarded. *Quære* if it were becauſe he pleaded the Record to the Writ, and ſhewed it not 22 *aſs. P. brief* 758. where the Tenant recovered alone in Right brought by himſelf againſt the Plaintiff in the Court of the Lord, the aſſiſe was awarded, becauſe it was not *ſub pede ſigilli* &c. 28 *aſs. P.*14. *aſs.* 266.

In an aſſiſe againſt *A.* and *B.* *A.* by his Bailiffe pleads to the Aſſiſe, *B.* pleads a Fine in Barre, the Plaintiff chooſeth *A.* for his Tenant, who comes in perſon, and pleads the ſame Fine, and a demurrer was if he ſhall have the Plea after the Aſſiſe awarded, upon the Plea of his Bailiffe, and the Aſſiſe is awarded. *Wilby*, this is error, for the demurrer ought to be determined before the Aſſiſe awarded, yet Judgement was given upon the verdict, for by the Aſſiſe awarded, the Juſtice of Aſſiſe have forejudged him of the Plea upon which the Demurrer was, 20 *Ed.*3. *Aſs.* 123. 20 *Book of Aſs P.*6. *Action and* 48 *Ed.*3. *fol.*7.

In an aſſiſe againſt *C.* and *D. de libero tenemento* in *Everwick*, and made complaint of an officer, againſt *C.* it was returned *nihil*, *nec eſt inventus*, and it was held that upon this return the Aſſiſe was awarded, *D.* ſets forth that the Office is removeable, and in divers Counties at the will of the King, yet the Aſſiſe was awarded, becauſe it was no Plea, *M.*7 *Ed.*3. *F. aſſ.*135. and here, and in every Caſe where the Aſſiſe is to be awarded by default, the Plaintiffe ought to make his Plaint for the information of the Court, becauſe the Plaint is one of Rent and of Land *&c.* and ſo in Dower, 38 H.6. *F. aſſ.*23.

In Aſſiſe againſt *J.* and *M.* his wife, *P.* and *W.* *J.* and *M.* come by Attorney, *P.* and *W.* by Bayliffe, who for *W.* ſay, that the Land deſcended unto him from *S.* his father, ſo he was in without wrong, and for *P.* they ſay, that the father of *W.* died, *W.* being within age, and the Lord ſeiſed him and granted him the Wardſhip, *J.* and *M.* claim as the dowry of *M.* of the third part of the inheritance of *S.* father of *W.* and of the aſsignment of the Lord, and undertook to attend *&c.* now firſt the Aſsiſe ſhall be awarded to enquire of the Diſſeiſin, and of the other Pleas, and then to inquire whether *J.* and *M.* hold the third part by the Mannor *&c. T* 13 *Ed.*3. *aſſ* 90. *vide Diviſ.*49.

The Bailiff ſaid, that an Aſsiſe was purchaſed, pending another Aſsiſe

by

by the ſame Plaintiff held that he ſhall not have the Plea, whereupon the Aſſiſe was awarded, *H.8.Ed.3.fol. Aſſiſ.140.*

Where Bailiff in an Aſſiſe of Rent pleads out of his Fee, the Aſſiſe ſhall be awarded to inquire thereof 25 *Book Aſſ.P.6. Aſſiſe* 232.

In an Aſſiſe by an infant, the Tenant pleaded Releaſe of the Anceſtor with warranty by Fine, it was held that the Infant ſhould thereto anſwer, and that the Aſſiſe ſhall not be at large, becauſe he ſhall not inquire of the circumſtances of a Record which he ſhall not find. *Yelverton*, the circuſtances ſhall not be inquired of, but it is to be conſidered, whether they ſhall inquire of other Titles in the advantage of the Infant, 22 *H.6.fol.* 51. *Aſſiſe* 12. *vide* 8 *Ed.2.Aſſ.*414. where the Aſſiſe was awarded upon the Title made by the Infant againſt the Fine.

And where the Infant was put to anſwer to ſuch Fine, and made Title by feoffment of the conuſee to his Anceſtor averred that he died ſeiſed &c. now it was held that the Aſſiſe ſhall be at large, but his Title ſhall be entred and inquired, yet if this Title be found againſt him, and another Title found for him, he ſhall recover *per Curiam* 28 *Book of Aſſ. P.6 Aſs.*263. *vide Diviſ.9.cap.7.*

A woman brought an Aſſiſe of Rent, and made Title by recovery in Dower againſt his Father by default, The Infant ſaid, that his father had nothing but in tail, and died ſeiſed, and as to the recovery, he pleaded that they were never married, and the Biſhop certified that they were married, now he ſhall not plead a new Barre, but the Aſſiſe ſhall be at large for him, and this ſhall acquit him of the Diſſeiſin, 28 *Book of Aſſiſe, pla.*52.

In an Aſſiſe of Rent, the Tenant pleaded to the Aſſiſe, it ſhall not be awarded untill the Plaintiff hath ſet down what Rent it is &c. 26 *Aſſ.P.6. Aſſ.*234. and if he ſaith that he holds at will, the Aſſiſe ſhall be awarded, as it ſhall be upon default, *ibidem, and* 15 *Aſſ.p.*4. upon default the Plaintiff cannot have an aſſiſe, without ſhewing what Rent it is &c.

In an Aſſiſe, the Tenant pleaded a Fine of his Anceſtor *&c.* that afterwards the ſame Anceſtor by Fine releaſed with warranty to one *G.* and died, the Tenant demurred and the Aſſiſe awarded, 29 *Aſſ.p.*1. *Aſſ.*275. So if the feoffment of the Anceſtor be pleaded in Barre, and the Plaintiffe pleadeth a Diſcent afterwards, and thereupon the Tenant did demurre, 7 *H.6.f* 42.

In an aſſiſe the Tenant pleaded in Barre, the Plaintiffe made Title, and thereupon it was adjourned into the Common Bench, and did hang there untill the end of the Term. *Babington*, If the Defendant demanded come not, the Aſſiſe ſhall be awarded at large, for where a Barre is pleaded, and the Plaintiffe maketh Title, if the Tenant demurr thereupon, he hath relinquiſhed the Barre, and then upon his default the Aſſiſe ſhall be at large, but where an Aſſiſe of Rent is adjourned upon the Title, and the Law adjudge againſt the Plaintiff, now although the Plaintiffe come not, the Plaintiffe ſhall not have an Aſſiſe, *M.*3 *H.6. fol. Aſſ.*3.

Where

Where a ſufficient bar is pleaded, and the Aſſiſe is awarded without injury thereof, this is error: as if in an aſſiſe of Rent the Tenant ſaith that he is Lord, and that the Plantiff is meſne, and that he took ſo much of the Rent of the Plaintiff, as of his Tenant &c. and becauſe he ſaid not that he took the ſame rent, the Aſſiſe was awarded, but this is error, 50 *Ed* 3 *f. Aſſiſe* 68. But where a good bar is pleaded, and the Plaintiff makes title, and the Plaintiff ſaith, that the Aſſiſe came upon the title, and this is found, there ſhalbe no further inquiry, 6 *H.7 fol.*2. *vide Diviſion* 47.

In an aſſiſe after bar, and for replication in the Kings Bench in *Suff.* the bench came in *Midd.* now the Tenant demanded Judgement, becauſe the aſsiſe is ſeaſed, and the original ſhall not be ſent out of the Bench, but it was holden that an aſsiſe ſhall be awarded upon a *Nihil dicit*, *p.* 19 *Ed.*3. *Aſſ.*84. and 19 *Book of Aſſ. P.*4. and 5.

In an aſsiſe of Land and Rent, the Tenant pleaded to the Land, that he was never ſeiſed, and to the rent, that it iſſued out of the ſame Land, and the Plaintiff being an Infant, was not put to anſwer, but the aſsiſe at large ſhall inqure of all, and of the circumſtances, *P.*11 *Ed.*3. *Aſſ.*86. So where an Infant is demandant, and the exchange of his Father is pleaded, the aſsiſe was taken at large, and found that he exchanged not, and moreover, that the Infant Plaintiff was not at any time ſeiſed &c. and yet the Infant ſhall recover, for the Tenant who pleaded out of the point of the Aſsiſe, ſhal not take advantage of other matter. Alſo the inquiry at large is all in favour of the Infant, ſo they ſhall ayd him, but ſhall never do him hurt, *M.7 Ed.*3. *fol.*71. *Aſſiſe* 139.

In an Aſſiſe the Tenant pleaded a Recovery againſt the Anceſtor of the Plaintiff, and ſaid that another Anceſtor died ſeiſed, and the Land deſcended unto him againſt whom *&c.* who died ſeiſed, and the Land deſcended unto us, the which matter *&c. & predict Def. ſimiliter*, now it was holden becauſe the Defendant had not anſwered unto the title, but, *et predict. Def. ſimiliter*, this is as no rejoinder, whereby the Aſsiſe ſhall not be taken upon the title, but in nature of an Aſſiſe at large, by which the title is not confeſſed. And if the Aſſiſe finds the doing of the Anceſtor hanging the Writ, and Judgement be given, yet his Heire ſhall not avoid this without error, and the Tenant ſhall have advantage thereof. And if another good title had been recorded for the Plantiff, he ſhould have recovered: and note, that it is to be obſerved when the title is made without traverſing the bar. *Pigot.* It ſeems otherwiſe in reaſon, if he had traverſed the bar. 28 *Book of Aſſiſe p.* 32 *Ed.* 3. *Aſſ.* 99. and hereto agreeth, wherupon pleading the Bar, the Plantiff makes his title, and that not traverſed the Aſſiſe ſhall be at large, 28 *Aſſ. p.* 48. *vide Diviſ.* 23. and where a ſufficient bar is pleaded, as a recovery againſt the Plaintiff, and he make an inſufficient title, as that his Anceſtor died ſeiſed, pending the Writ, or after the Writ, and the Aſſiſe taken at large without rejoinder, yet they ought to inquire of the bar pleaded, aſwell as upon the ſeiſin and

diſſeiſin,

diſſeiſin, and after recovery pleaded, ſeiſin and diſſeiſin ſhall not be found without ſaying how it came, *&c.* 28 *Aſſ. Pla.* 17. *Aſſ.* 267.

In an Aſſiſe by an Infant, the Tenant Pleaded the Feoffment of the Anceſtor with Warranty, the Aſſiſe was awarded at large, and that found by diſſeiſin, 16 *Aſſ. P.* 9. *Aſſiſe* 207. and error upon a deviſe pleaded by the Anceſtor of the Infant in and proved there, and proclaimed to put the Infant to anſwer thereunto without taking the Aſſiſe at large, 37 *Aſſiſe. P.* 5. *Aſſiſe* 328. But the Infant was put to anſwer to a Leaſe for years, pleaded to be made to his Father by deed. But the Aſſiſe awarded 32 *Aſſ. p.* 6. *Mord.* 31. 40 *Aſſ. P.* 34 *Aſſiſe* 342. 39 *Aſſ. p.* 3. 46 *Aſſiſe P* 13. the Infant ſhall not anſwer to the Deeed, but there the Deed was inſufficient.

In Aſſiſe upon bar pleaded, the Plaintiffe made his Title by Leaſe of the Tenant for life &c. upon which the aſsiſe was awarded, now becauſe the title is not anſwered nor traverſed, the aſsiſe ſhall be at large, and if another title be found for the Plaintiff, he ſhall recover. In like manner other matter found for the Tenant ſhall be good, as the Leaſe found upon condition, and that he entred for the breach thereof &c. upon this the Plaintiff ſhall be barred, al though the Tenant plead another barr. 28. *Aſſiſe P*: 48. *Aſſiſe* 273. *Plea* 17. and 17. *Aſſiſe p.* 18. *Shard* agreeth. *Wilby*, the Aſsiſe ſhall be there upon the Title, and upon the ſeaſin and diſſeiſen; but if the Title were traverſed and found, they ſhall not enquire of the ſeiſen, but of the diſſeiſen and damages *Title* 9. *vide Diviſ.* 2.

An Aſsiſe againſt Husband, and Wife, who confeſſed the ouſter by plea, and upon default of the Husband the Wife was received, and pleaded the ſame Plea, and it was found againſt her, yet the aſsiſe ſhall be taken of the ſeiſin or diſſeiſin &c. and thereupon this being found, no diſſeiſor named, the Writ abated. *Belknap.* If in an aſsiſe brought againſt two, the one confeſſeth the ouſter, and the other pleadeth to the Aſsiſe, and he is found Tenant, and that no diſſeiſor is named, the Writ ſhall abate, and the plea of a ſtranger ſhall not hurt the Tenant, 44 *Ed.* 3. *fol.* 23. *Aſſiſe* 58. 11 *H.* 4. *fol.*

In an Aſsiſe the Tenant made his title as Heir, and that the Plaintiff is the ſon of 7. the ſon of our Father born before the eſpouſals &c. the Plaintiff ſaith that his Anceſtor was ſeiſed, and the King ſuppoſing that he had forfeited for treaſon ſeiſed, and upon his death we have Livery becauſe found no Traytor, the Tenant demurred to this, and the aſsiſe awarded in point of aſsiſe, and upon the whole matter found, the Plaintiff recovered *M.* 2. *Ed.* 3. *fol. Aſſiſe* 170. 2. *Aſſ. p.* 9. 29. *Aſſ. p.* 1.

Upon an inſufficient bar pleaded the Plaintiff ſhall have an aſsiſe at large, 11 *H.* 7. *fol.* 28. So where they demur upon a bar, and upon adjournment, this is judged no bar nor eſtoppel, 39. *Aſſ. p.* 3. 46. *Aſſ. p.* 13. *vide Avowry Diviſ.* 44. and 38.

II. *Where a man ſhall recover an Aſſiſe by releaſe of damages without enquiry of the ſeiſin or diſſeiſin, and where it ſhall be in right of damages.*

IN an Aſſiſe againſt the Husband and Wife, and *T.* the Husband and Wife pleaded a recovery, *T.* pleaded to the aſſiſe, they faile of the Record, the Plaintiff recovered damages and ſeiſin of the Land without taking the aſſiſe againſt *T.* 44 *Ed.*3 *fol.* *Aſſ.* 57. But if the Husband had made default at the day, and the Wife had been received, although ſhe knew nothing to ſay in bar, yet the aſſiſe ſhalbe taken at large. So where the infant failes of the Record, *M.* 14 *Ed.* 3. *Aſſiſe* 110. agreeth, that by failer an Infant ſhall not be an attaint, a Diſſeiſor without Verdict of aſſiſe, 36 *Ed.* 3 *Aſſ.* 443. *vide Diviſ.* 1. and 22. and *Diviſ.* 9 *failer in mort d.*

Upon Record of a *Retraxit* pleaded, and day given over to have it at the day, in the bench he failed, becauſe the Juſtices found it not, the Plaintiff releaſed damages and had Judgement 15 *Ed.* 3. *Aſſ.* 96. So if the Plaintiff upon the bar makes title upon Record, and at the day brings it, the aſſiſe ſhall be in right of the damages 29. *Aſſ. pla.* 1. *Aſſiſe* 275.

And where a man ſhall have Judgment without releaſe of damages. *Vide Diviſ.* 1. *cap.* 2. 30. *Ed.* 13. *Aſſiſe* 10.

In an aſſiſe againſt Husband an Wife, who plead a Record and faile, ſhe being received, the Husband ſhall not be ſaid to be a diſſeiſor by the failer: and if the Wife plead a Record and confeſs the ouſter, yet no Judgment ſhall be upon this found againſt her without verdict of the diſſeiſin. But if in a *Precipe* ſhe be received upon the default of the Husband, *Vide le Diverſite H.* 11 *Hen.* 4. *fol.* 51. *& vide* 26. *Aſſiſe pla.* 35. and if ſhe plead the Deed of *A.* and it is found againſt him, and moreover that the ſame *A.* held joyntly with the Wife, and that ſhe ſurvived, now ſhe ſhall recover and bar the Plaintiff 39. *Aſſ. p.* 16. *Aſſiſe* 327.

If a man pleadeth a Deed in Bar, and confeſs not the ouſter, and after waves his bar, the inquiry ſhall be only of the ſeiſin, and upon finding thereof the diſſeiſin ſhall be adjudged by the Plea, *M.* 13. *Ed.* 3. *Aſſ.* 117. and this may be, be it an Aſſiſe of Rent or of Land.

And it is ſaid, that where upon a bar pleaded, and title made, and found, the inquiry ſhall be only of the ſeiſin and damages &c. It ſeemeth this is underſtood in right of damages, 17. *Aſſ. pla* 18.

But ſee where the Deed is pleaded in bar, and the Plaintiff makes a title, by which he waves the bar, and alledgeth the Land to be in another Town, becauſe he would ſay nothing elſe, the aſſiſe was awarded, and it was there ſaid, that when the Tenant waves his bar *Parn.* he uſed to take the aſſiſe for the dammages, 1 *Aſs. p.* 17. *Aſs.* 181. But other ſay, that the aſſiſe ſhal be at large, if he wave the bar and plead to the aſſiſe *&c. Vide* 11 *Aſs. pla.* 23.

In an aſsiſe againſt the Husband and Wife, and *T.* the Wife pleads to the aſsiſe, the Husband takes the whole, and voucheth the ſame *T.* who warrants and pleads a Record and fails, now the Wife may pray receipt, upon default of her Husband, for he is not out of the Court, but ſhall have challenge to the aſsiſe, and the aſsiſe ſhall enquire whether he be a Diſſeiſor, 16 *E.* 3. *Receipt* 104.

The Tenant pleads a Recovery againſt *T.* in Error, and that he entred upon the Plaintiff ter-Tenant, without a *Scire fac.* by which the aſsiſe was awarded in right of the damages, 28 *Aſs. pla.* 11. *aſſ.* 268. *Vide Diviſ.* 28.

III. *Where Aſſiſe ſhall twice be taken, and where a* Mortdeanceſter *or* Juris utrum *ſhall be twice taken, and where not, upon Lands ſeiſed into the Kings hands.*

IN an aſsiſe againſt two, the one pleads to the Aſsiſe, the other that he is not Tenant, but to the King. This ſhall preſently be inquired of by the aſsiſe, if the Eſcheator be not preſent. But if the King certifie that he is ſeiſed, whether this be pending the Writ or before, the Court ſhall ſurceaſe, 38. *Aſſ. p.* 16. *Ayde de Roy* 91. *Vide* 30. *Book of Aſſiſe P.* 5. and if this be found after *Procedendo*, the aſsiſe ſhall again be awarded, 12 *H.* 6. *fol.* 1. And the aſsiſe ſhall not ſtay, if the Eſcheator be preſent, nor ſhew the cauſe of the ſeiſure, 9 *H.* 7. *fol.* 10 *vide* 16 *H.* 7. *fol.* 12. An aſsiſe by *Amit.* and *Neece*, the Tenant who was Husband of the Mother, and *Neece* her Daughter pray aid of him as Tenant by the Courteſie, and alledge that ſhe is within age &c. whereby the aſsiſe ſtaid for the whole, becauſe it ſhall not be taken by parcels. So where the Tenant pleads a feoffment of the Tenant by the Courteſie with warranty in bar for one moyety, and voucheth the Neece for the other moyety who is within age, the whole ſhall be ſtayed *cauſa dicta* 41 *Ed.* 3. *fol.* 7. Counterplea of aid thereto in a *Mortdeanceſtor*, 40 *Aſſ. P* 37. *Voucb.* 207.

In a *Juris utrum* by three ſeverall ſummons, the Tenants were eſſoined, and after made default, and the Jury awarded againſt the one, and the one ſummoned alone, and taken by *Niſi prius*, and the whole held diſcontinued, becauſe there was no mention in the Record of the reſt. But if the Record had mentioned the others and their ſeveral Pleas, the Verdict ſhould have been good, and he ſhould have recovered thereupon. For a *Mortd.* or *Juris utrum* may be well taken by parcels where there are ſeveral ſummons, and all mentioned in the Record, 17 *Ed.* 3. *Diſcent* 49. otherwiſe it is in an aſsiſe, becauſe no ſummons.

Mortd. againſt three by ſeveral ſummons, they all vouch, the Voucher of the one is Counterpleaded, the ſame ſhall not be tried by the aſsiſe, becauſe it ſhall not be taken by parcels, and hereupon ſeiſin found, there

ſhall

ſhall be inquiry further of the points of the Writ, 16 *Aſſ. P.* 3. and if the one Tenant vouch forraign, all the aſsiſe ſhall be adjourned, although there were ſeverall *Precipes*, and upon default of the others, the aſsiſe ſhall be awarded againſt them, but not remanded to be taken, until the iſſue be ended between the Tenant and the Vouchee; and then all ſhall be remanded, 17 *Aſſ. P.* 9.

In an aſsiſe againſt two, the one took upon him the whole, and pleaded in bar, the other prayed aid of the King: the Plaintiff ſaid that he which pleaded in bar is Tenant &c. Now the aſsiſe ſhall inquire who is Tenant, and if the other be found Tenant, he ſhall have aid, and after a *Procedendo* the aſsiſe ſhall be again taken: and if in a *Mortd.* the Tenant vouch, and this is Counterpleaded, the aſsiſe ſhall be taken, and if the Counterplea be found for the Tenant, he ſhall have the Voucher. So upon aid counterpleaded &c. And then for the Vouchee, or Prayer, the aſsiſe may be taken another time. So if the Vouchee vouch over, and it is Counterpleaded, *M.* 15 *Ed.* 4. *fol. Aſſ.* 33. So where he which hath pleaded to an aſsiſe by *Baliff*, and pleads a fine in his proper perſon after 20 *Aſſ. P.* 6. *Aſſ.* 215. and the aſsiſe ſhall not be taken upon any Iſſue after the choice of the Tenant, until the aſsiſe have inquired who is Tenant, 35 *Aſſ. P.* 3. *Aſſ.* 320. *Vide* 12 *H.* 9 *fol.* 2.

The cauſe of ſeiſure by the Eſcheator is not material, otherwiſe it is of a ſeiſure of him who hath a Commiſsion to inquire and ſeiſe, for his ſeiſure without inquiry is void, 30 *Aſſ. P.* 5.

In an aſsiſe againſt *B.* and *C. B.* as tenant of one acre pleads no ſuch town, *C.* as tenant of the reſt pleads jointenancy by Deed, the aſsiſe ſhall not be taken againſt *B.* until the jointenant be warned whereby day ſhall be given to *B.* until &c. and then one aſsiſe ſhall ſerve for all, *H.* 19. *Ed.* 2. *Aſſiſe* 407. *Aſſiſe P.* 21. 22 *Aſſ. P.* 6. and where the jointenancy was pleaded to parcel, and the other maintained that he was tenant of the whole, the Aſsiſe ſhall ſtay for the whole, 19 *Aſſ. P.* 14.

In an aſsiſe by two, the tenant pleads releaſe of the one, and that he is ready to hear the aſsiſe againſt the other, now all ſhall be adjourned, for the aſsiſe ſhall not be taken of the moyety, 26. *Aſſ. P.* 19.

The diſſeiſin was found, and damages aſſeſſed, and before Judgment the tenant cuts down trees to the value of 20 l. and upon this alledged by the Plaintiff, the aſsiſe was cauſed come back, and found damages for this alſo, and Judgment given upon the whole, and good, *Trin.* 1 *Ed.* 3. *fol. Damages*, 116. *Audita querela* upon a Defeaſance of 50 l. whereof he hath paid 20 l. and tendered the reſt at a day; Iſſue was upon payment alledged, and found for the Plaintiff, who prayed his damages, and proceſs made to the ſame Jury to inquire of the damages &c. and no challenge admitted upon the matter, which was before the firſt inqueſt taken, *P.* 22. *Ed.* 3. *fol.* Bar 283.

IV. *Election of the Tenant in an Aſſiſe, and how and when the Aſsiſe ſhall inquire thereof, and where it is at the perill of the Plaintiffe.*

In an Aſsiſe againſt two, the one as Tenant pleads in Barre, the other that no Tenant is named, the Plaintiffe makes Title at the Barre, and the other ſaith, that to the plea pleaded *&c.* and the Title found for the plaintiff, and that both are joynt-tenants. This finding of the jointenancy is void, becauſe the Plaintiffe ſhall not be compelled to chooſe his Tenant, but where one of them takes upon him the whole, and pleads *&c.* and there if he have miſtaken his Tenant, the Writ abateth, and he ſhall be barred, but he is not compelled where the one pleads in Barre, and the other to the Aſsiſe, *per Littl.* 33 *H.6.fol.*35. *aſſ.*19. bnt where the one pleads in Barre, and the other joyntenancy, and the Plaintiffe chooſe him who pleaded in Bar, and the other is found Tenant, now the Writ ſhall not abate, but the Plaintiffe ſhall anſwer to the joyntenancy (the Reporter ſeemed of a contrary opinion) 44 *Ed.*3.*f.*23. *aſſ.* 59 and where the one pleaded joyntenancy and the Plaintiff did chooſe *T.* for his Tenant, and it was found that neither of the two, bnt that one of another name was Tenant, and ſeiſin and diſſeiſin found, the Plaintiffe ſhall recover 42 *Book of aſſ.P.*1 *aſſ.* 345.

In asſiſe againſt *S.W.* and *R.S.* as Tenant pleads a plea, *W.* and *R.* plead as Tenants, without that that *S.* hath any thing, and plead ancient Demeſne, the Plaintiffe ſaid that he was ſeiſed untill diſſeiſed by them all to the uſe of *W.* who aliened to perſons unknown, and took the profits, and as to the Plea pleaded by *W.* and *R.* joynt-Tenants no Law *&c.* and upon demurrer it was holden that now *W.* alone ſhall not have this Plea; and if two plead in Barre Joyntenancy, and the Plaintiffe ſaith, that they are ſeverall Tenants, they ſhall not plead a new Barre ſeverally: and if one of the Pernors profits be in fact, and another in Law, and they plead ſeverally, the Plaintiff may ſay that the one is Pernor in Law, and anſwer to his Plea, and not to the other, 21 H.6.*f.*57. *aſs.*38.

But where the Plaintiffe hath choſen him who pleaded to the Aſsiſe by Bailiff for his Tenant, where the other pleads a Fine in Barre, the firſt in his proper perſon pleaded the ſame Fine in Barre, and held good, becauſe the Plantiffe had choſen him Tenant, and ſo enabled *&c.* but becauſe it was in the Countrey, to take the Aſsiſe of the Seiſin and Diſſeiſin, he was was ouſted of the Plea *&c.* *Quære* if error, 20 *Aſsiſe, P.*6 *Aſſ.*215. the ſame was adjudged accordingly by *Finch*, becauſe by taking the Aſsiſe he was forejudged of all Pleas, 48 *Ed* 3.*f.* 7. *Aſs.*64. but note there, that the Aſsiſe found him who pleaded to the Aſsiſe Tenant and Seiſin and diſſeiſin *&c.* *vide* 20 *Ed.*3. *Aſsiſe* 123.

In an Aſsiſe againſt two, the one (who was Tenant made default, the other

other took upon him the Tenancy, and pleaded in Barre, and the Plaintiffe did not maintain him which made the default Tenant to have the Aſsiſe upon his default, but anſwered to the Plea of the other, and the Aſsiſe was found for the Plaintiffe, and that he which made the default diſſeiſed him not, he being outed by the Plaintiffe ſhall not have an Aſsiſe, but upon ſuch recovery in a *Præcipe*, he which made the default and is outed being Tenaut ſhall have an aſsiſe againſt him who recovered, and not taken at default, 21 *H.6.f.* 57. *vide* 50 *Ed.* 3 *f.* 13. *aſs.* Otherwiſe in the former Caſe, and that he ſhall have an aſsiſe *Diviſ.* 12.

And note, that in a *Præcipe* againſt husband and wife and *T.* where *T.* departed in ſpite of the Court, now if the Husband and wife ſuffer judgement to be given without taking the whole, although that they be Tenants of the whole and are outed by the recovery, they ſhall not have an Aſsiſe of the moyety, 46 *Ed.* 3 *fol. aſſ.* 62. *vide* 12 *Ed.* 4 *fol.* 1. *Diviſ.* 25.

If the Tenant ſaid nothing, and the Diſſeiſor anſwer as Tenant, and the Diſſeiſin found, the Tenant ſhall loſe his Land, *per Priſot* 33 *H.* 6. *fol.* 40. and if the one plead *nul. tort.* as he which hath nothing, and the other plead in Barre, and it be found againſt the Plaintiffe, whereby he takes nothing, and after he which pleads to the Aſsiſe and hath got poſſeſſion, and the Plaintiffe bring an Aſsiſe againſt him, he ſhall not plead this recovery againſt him, *M.* 20 *Ed.* 2. *Aſſiſe* 398.

In an aſsiſe againſt *I.* and others, the others pleaded Jointenancy to part, and as to the reſt, as Tenants pleaded in Barre, and *I.* as Tenant alſo pleads in Barre, and the Plaintiffe chooſeth him Tenant, and maketh his Title by breach of a condition, *&c.* and Judgement was given, where the point in iſſue was inquired before us, who was the Tenant, it was error: ſo if the Tenant plead, no Tenant named, and it be found that he is *&c.* if they inqnire of the Diſſeiſors before who was the Tenant, it is error, *P.* 11 *H* 4 *fol.* 66. *Aſsiſe* 48. 12 *H.6 fol.* 1. And if he which is choſen Tenant pleads a Record, and fail at the day, yet no judgement, but another day ſhall be given to have it, becauſe it is meet to have firſt an inquiry who was Tenant, 35 *Aſs. P.* 3. *Aſs.* 320. agrees upon adjournment of the demurrer before the Tenancy be tryed, 35 *Aſs. P.* 2. where there ſhall be error, 12 *H.6 fol.* 1.

In an aſsiſe againſt *S.* and *M. S.* pleads a recovery of the ſame Land in another Town, *M.* as Feoffee of *S.* pleads the ſame Plea, the Plaintiff without chooſing the Tenant demurres, becauſe in another Town, and after adjournment he did chooſe *M.* Fenant, without that that *&c. Schard* liked it well, becauſe the adjourment is before the ſame Juſtices, and in the ſame plight as it was in the Countrey, and he held the Recovery no Plea, *P.* 22 *Ed.* 3 *fol.* *Aſ.* 126.

In an Aſsiſe the Tenant pleaded a recovery againſt another named, & the Title Plaintiff mean between the Title & the Recovery, The Paintiff ſheweth how that the Tenant aliened to another pending this Aſsiſe, without anſwering his Title be mean, or to the right of the Tenancy, *vid. Div* 11.

So

So if he againſt whom &c. had entred upon the Land by his aſſent without Feoffment, 25 *Aſſ..P.*1.*Aſs* 230.and where the one pleads jointenancy, the Plaintiff may well ſay, that the other was Tenant at the day that the Writ was purchaſed, and if upon this enquiry the jointenancy be found, it ſeems that the Writ ſhall abate, but it ſhall there abate, becauſe the deed of the jointenancy was void, 26 *Aſs.P.*2. *aſs.*233. But note, this was upon Iſſue joyned between the parties, but if upon the chooſing of the tenant the enquiry had been *ex officio* onely, it ſeem it ſhonld not abate, becauſe the tenant which was outed, pleaded Jointenancy, and not in Barre, 26 *Aſſ,P.*2. but *Pigot* thought the Caſe miſtaken, for it ſhall not abate by the miſchooſing of his tenant, but by the finding of the jointenancy.

The one pleaded joyntenancy, the Plaintiffe ſaid, that the other was tenant, without that &c. that at the day of the Writ purchaſed &c. And it was found that at the day of the Writ purchaſed, the other named gave to him that pleaded jointenancy jointly &c.and found the Seiſin and diſſeiſin whereby the Plaintiffe recovered, *P.* 18 Ed 3 *Aſſ.*77.

In an Aſſiſe of Rent, the Plaintiff ſhall chooſe his tenant 17 Ed. 3. *Aſ.* 75. *& vide* there he choſe the mean his tenant.

In an Aſſiſe againſt *F*.and *M*. the one ſaid,that he had nothing but in reverſion, and that there was no ſuch *F*. *in rerum natura*. *M*. pleaded jointenancy, the Plaintiffe choſe him tenant, and Seiſin and diſſeiſin found, by which he recovered without inquiring if there were ſuch *F*.&c. 42 Ed 3.*Aſſ.*128.

Note, if every one take upon him the whole, and plead in Barre, and the Plaintiff chooſe one for his tenant, and the other is found tenant, the Writ ſhall abate, 44 Ed 3.*f.*23 *Aſ.*59.But it was held otherwiſe there, if he which is not choſen plead jointenancy,and is found tenant.

An Aſſiſe againſt two, the one pleads to the Aſſiſe, the other as tenant to the moyety pleads in Bar,and the Plaintiff chooſeth the other tenant, & he which pleaded to the moyety had nothing which might maintain that he is tenant, and ſo found, and the Seiſin aud Diſſeiſin found, yet the Plaintiff ſhall be barred for ever by ſuch triall of the tenant, at the charges of the parties; which is not where every one pleads in Barre; and the Court *de officio* will inquire who is tenant, and there it ſhall not abate,&c. 20 *Aſſ.P.*4 *Aſs* 214.26 *Aſs.P.*2.

In an aſſiſe againſt *J*.and *A*. *J*. as Tenant pleads to the Aſſiſe, *A*. pleads as ſole Tenant, a fine to him by a ſtranger, and alledgeth the title of the Plaintiff mean between the grant and execution. Now the Plaintiff prayed the Aſſiſe, and ſome thought that the Court ſhould not inquire who is Tenant, but where the Plaintiff had choſen his Tenant, and if he be Tenant, he ſhal have this plea, and if the Plaintiff miſtake the Tenant, his Writ ſhall abate; ſome gain-ſaid this: and if one plead to an aſſiſe, as Tenant, and the Plaintiff admit it, and after it is found that he is not tenant that the Writ ſhall not abate &c.8 *Aſſ.P.*1. 8 *Ed* 3.*fol.*1.

And

And where every one pleads in Bar as Tenant of the whole, it is error to enquire of the iſſue, before enquiry who is Tenant 11 *H.* 4. *fol:* 66. 12 H. 6. *fol:* 1. *ſupra.*

V. *When the Tenant ſhall plead after the Aſſiſe awarded upon the Plea of his Bailé, and what plea: where after the Aſſiſe awarded againſt him, and where in perſon after the Plea to the Aſſiſe.*

IN an Aſſiſe all pleaded to the Aſsiſe by Bayliffs which remains for the default of Jurors, and at the day the one appeareth and pleads a releaſe with Warranty, and recovers, yet it was ſaid, that the Statute did not help him, but a in Certificate after the Verdict againſt him, H. 11 *Ed.* 3. *Aſſ:* 85. 12 *Ed:* 3. *Aſſ:* 116. 12 *Aſſ: P:* 37. 8 *Aſſ: P:* 18. & 8 *Ed:* 3. *fol:* 39. wherto agreeth *Diviſe* 35.

But where an Aſsiſe is awarded upon the plea of the Bayliff, and ſome are now ſworn he ſhall not plead a Releaſe in his own perſon, 29 *Aſſ: P:* 18 *Aſſ:* 182. *Vide* the Tenant pleaded a Releaſe made after Verdict at the day of Adjournment upon the Verdict. In like manner he ſhall plead the entry of the Plaintiff after the Verdict, but he ſhall not plead a Releaſe after *Niſi prius*, 21 *Ed:* 3. *fol:* 23. *Aſſ:* 105.

An Aſsiſe againſt Infants, who ſeverally as Tenants of parcell plead to the Aſsiſe by their Bayliff, and the Aſsiſe awarded, and after they vouched R. by Leaſe for life, and he could not change, becauſe it is no plea wherof certificate will lye, 8 Ed. 3. *fol:* 39 8 *Aſſ: P:* 18. And an Infant was not received to plead diſcent after Aſsiſe awarded upon the Plea of his Bayliff, and certain of the Aſſiſe ſworn 3 *Aſſ: P.* 11. *Aſſ.* 187. *P.* 3. Ed. 3. *Age* 68.

Vide Diviſ. 1 *B.* and the 4 *C.* where he which plead to an Aſsiſe by his Bayliff, and after the Aſsiſe awarded, was choſen Tenant, he could not plead in Bar, 20. *Aſſ. P* 6.

An Aſsiſe of the fourth part of the Uſhery of the Common Pleas Bench, upon an inſufficient Bar pleaded, the Aſsiſe was awarded, the Plaintiff ſhewed the Deed of the Office to the Court, the Tenant ſhall not have view therof after the Aſsiſe awarded, 7 Ed. 3. *fol.* 57. *Aſſ.* 135. 7 *Aſſ. P.* 12.

After Aſsiſe awarded which remained for want of Jurors, the Tenant pleaded that the Demandant had entred into part hanging the Writ, and leaſed it to us for years, and it was good, becauſe it was to the Writ: and if the Tenant alien to the Plaintiff upon condition, that if the Tenant do not, *&c.* that all ſhall be void, and he do it not, but the Plaintiff continues ſeiſed, the Writ is abated, *M:* 10 *Ed.* 3 *fol.* 5. *Aſſ:* 163. ſo he ſhall plead every plea comes after the laſt continuance after the aſsiſe awarded, 10 *Aſſ. P.* 14.

VI. *Pleas*

VI. *Pleas for the Tenant of Land in an Aſſiſe of Common, Corody &c. and where the Pernor of the Profits is not named, and where all the Tenants are not named.*

IN an Aſsiſe of Rent, the tenant of the Land pleaded *out of his fee*, and upon title made by recovery by confeſsion of the Anceſtor in Dower, the Anceſtor had it not but in taile, and we are in by diſcent, and ſaith, they were never married &c. and that certified againſt him, he could not have another Plea, although he were within age, 28. *Aſſ. P.* 53. *Aſſ.* 274. Note that *out of his fee* is no plea, if he ſhew not in fact that he is tenant *per Priſot*, 32 *H.*6. *fol.*20.

Upon *out of his fee* pleaded, and title made by grant *de manerio recipiendo* by the hands of *T.* and *C.* One of the Defendants ſaid, that the parcel whereof he is ſeiſed, the Grantor held in Demeſne at the time of the grant: and the other ſaid, that the Land whereof he is ſeiſed was charged but with 4s. at the time &c. how the Grant ſhall enure. *Vide Grant* 7 *Ed.* 3. *fol.*9. *Aſſiſe* 132.

An aſsiſe of Rent, and made title by Grant to the Husband and Wife of 8 l. for their lives, and if ſhe ſurvived him, that ſhe ſhould have 40 s. now the Wife ſurvived, and brought an aſsiſe of the 8 l. and well, but the tenant being a ſtranger to the Grant, may well ſay, That at another time ſhe brought a Writ and demanded 40 s. only, 8 *Ed* 3. *fol.* 23. *Aſſ.* 143. and yet the other was depending. *Vide feoffment. Diviſ.* 34.

An aſsiſe of twenty pence Rent, and three acres of Meadow, the tenant ſaith, that this iſſueth out of the Meadow, and three acres of Land whereof *I.* holdeth two acres, and *T.* holdeth one acre not named, and a good plea. And it was found that *R.* held the Land and Meadow of the Plaintiff, and aliened the Land to divers perſons to hold of him, before the Statute, and after the Statute aliened the Meadow to the tenant, to hold of the chief Lord. Now befote the alienation of the Meadow the aſſ. had lain againſt *R.* without naming the others &c. But now the tenant holdeth but parcel, and ſhall not abridge the Plaint, nor apportion the Rent in abſence of the other tenants &c. *M.* 4. *Ed.* 3. *fol.* 47. *Aſſ.*165. 3 *Ed.* 3. *Aſſ.* 175.

If the Plaintiff himſelfe be ſeiſed of parcel of the Land, whereof &c. and the tenant of another parcel, and a ſtranger not named of another parcel, the whole ſhall abate, for he ſhall not abridge againſt him that is not named, but he may well abridge for the parcel of which himſelfe is ſeiſed; but note, that the tenant which pleadeth this muſt ſet down that he is tenant of right, and that he holds not the whole of the Plaintiff as of himſelfe; for *ſi ſic*, the aſſiſe lieth without naming the others, 3 *Aſſ. P.* 18. *Aſſ.* 188. 4 *Aſſ. P.* 5. In like manner the tenant which pleadeth this

ought

ought to tender his rent for his portion, and if the Plaintiff hath been ſeiſed of the whole Rent by the hands of the tenant, yet he ſhall plead this matter, 3 *Ed.*3. *fol.* 21. *Aſſ.*173. 3. *Aſſ. P.* 18.

Lord and tenant before the Stat. the tenant enfeoffs divers of the parcels to hold of himſelfe, and others of another parcel to hold of the Lord, now the Lord ſhall not diſtrain the laſt Feoffees, nor have the aſſiſe againſt them without naming the others, and the tenant, but before the laſt Feoffment the aſsiſe did lie againſt the tenant alone, as tenant of parcel, and hinſelf at the reſt, 4 *Aſſ. P.* 6 Rent granted of one Oxe-gang of Land, and if this be aliened, or recovered, ſo that the Rent be ſtayed that he ſhall diſtrain in the Mannor of *B.* and the Oxe-gang is ſold, yet he ſhall not have an aſſiſe without alſo putting the Oxe-gang of Land in view, 1 *Ed.*3. *fol.*21. *Aſſ.*109. 1 *Aſſ.P.*10. *Grant diviſ.* 4. *&c.*

It is no plea to ſay that he holds as Guardian &c. for the Guardian ſhal hold it charged, 3 *Ed.*3. *Guardes Diviſ.* 29. tenant ſaid, that he had nothing but by leaſe of the King of temporalties whereof &c. had aid, and after *Procedendo*, he excepted againſt the deed bearing date beyond the Seas, 27 *Aſſ.P.* 43. *Aſſ.*2. 155.

The Tenant may well ſay, that the Eſcheator had ſeiſed the Rent for the King by office, or without Office. Iudgement if the King being not conſulted, &c. So that the King reciting the Grant of the Land, and the Rent reſerved ratifie it &c. Or that another is Tenant of parcel not named. Or where the Rent is ſuppoſed to iſſue out of the Mannor of *T.* and Hundred. The Tenant may ſay that there are four Towns within the Hundred not named. Judgement &c. But it ſeems it ſhall be no Plea, becauſe a hundred ſhall not be put in view, 30 *Aſſ P.*5.

If a ſtanger take Rent by coertion of diſtreſs, yet the aſſiſe lieth againſt the Tenant alone, without naming the Pernor. 30 *Aſſ. P.* 5. *Aſſ.* 267. *Vide* 33. *Ed.* 3. *Aſſiſe* 456. in an aſſiſe againſt the Pernor alone reſcous was made by the Tenant and another.

An aſſiſe of ten pound Rent, all the Land is put in view, the Tenant who pleads *out of his Fee in generall*, ſhall not afterwards ſay, that he is tenant but to parcel, for he might have alledged that at firſt, and have pleaded over *out of his fee*, but the Plaintiff admitted the plea, by which the tenant ſhewed, that the Plaintiff hath recovered parcel of the Land &c. for the which cauſe the Rent was apportioned, 30 *Aſſ.P.*12. *Aſſ.*300. and how it ſhall be apportioned. *vide Avowry Diviſ.* 35.

And the Tenant may ſay that the Plaintiff hath purchaſed part of the Land whereof &c. or that part is deſcended unto him, 34. *Aſſ. P.* 15. *Aſſ.* 318. *vide Avowry Diviſ.*35.36.

If a Stranger hath recovered parcel of the Land, whereof an aſſiſe brought for the Rent abated, becauſe he named not the Recoverer, 8 *Ed.* 2. *It. Ca. Aſſiſe* 392. An aſsiſe of a Rent charge, not naming all the ter-tenants ſhall abate, unleſs that he name a *Pernor* of the Profits for the whole. But for a Rent ſervice, it is ſufficient to name the meſne for all, 33 *Ed.*3. *Aſſ.* 456.

But in a *Scire fac.* againſt *T.* of 20 s. rent, as Ter-tenant a Deforceor, where ten ſhillings is a Rent Charge iſſuing out of his Land, and thereſt is Rent ſervice whereof he is meſne, the Writ ſhall abate for the reſt, for the Writ ought to ſuppoſe him tenant thereof, 31 *Ed.* 3. *Writ.* 331.

In a *Formedon* of rent, to ſay that a ſtranger is ſeiſed of parcell of the Land whereof &c. goeth to this action, *M.* 17 *Ed.* 3. *Writ* 353.

In an aſſiſe where *Cui invita* was brought of Land and Rent, the Tenant by receipt being party to the Writ, as to parcel of the Rent, ſaid, that the Rent iſſueth out of the Land demanded &c. and this was a good plea to the Writ, and to another parcel ſaid, that *B.* was ſeiſed of the Land, and leaſed it unto *I.* for life, rendring the Rent and died, his heire leaſed it for life to another, rendring a Rent, and granted to us the reverſion, and *I.* the firſt Leſſee is dead, and this was the rent for which the Action is brought, which *B.* granted to the Plaintiff, this is a good plea, for which cauſe the Plaintiff ſaid, that *B.* was ſeiſed of the Rent in fee, and it appeared by the plea of the Defendant, that he is not tenant of the Land, nor of the Rent demanded, 12 *Ed.* 3. *Writ.* 257. *vide Diviſ.* 7.

In an aſsiſe of Common appurtenancy, the Tenant ſaid that he is Lord, and one *T.* was Tenant of the Free-hold to which the Common appurtenancy is claimed, and we incloſed againſt *T.* who aliened to the Plaintiff, and ſeemeth a good bar, 4 *Ed.* 3. *Aſſ.* 179 and here it ſhall be a good plea, that another is tenant of parcel of the Land not named &c. *ibidem.*

VII. *Pleas for the Pernor of the Rent or Tenant, &c. and who is Pernor, and where the Ter-tenant ought to be named, and where not.*

IN a Writ of entry of Rent in the *Per*, the Pernor may well ſay that the Land out of which &c. is ancient Demeſne, *M.* 4 *Ed.* 3. *fol.* 53. *Anc. Demeſne* 19

In a *Formedon*, it ſeems that the Pernor of the Profits ſhall not ſay, that another is tenant of part of the Land, of which &c. not named, but the ter-tenant ſhall have the Plea, and it ſeemeth no plea for Rent ſervice. *Vide Diviſ. B. G.* But it ſeems no Plea, that he holds not of him, for this is to be ſeen by the Alienation of the tenant in taile, and yet the iſſue ought to recover. And the Writ lieth againſt the meſne alone, who is not ter-tenant, nor the Pernor, but ſhall abate, if he be not meſne of the whole, 19. *Ed.* 3. *Brief* 468. *M.* 33. *Ed.* 3. *Writ* 921. and *Vide* that *out of his fee* is no plea in a *Formedon* of Rent, becauſe this is true, yet the Lord ſhall falſifie a recovery againſt tenant in taile, 44 *Ed.* 3. *fol.* 19.

Non-tenure of part of the Land out of which the Rent charge or Rent ſock &c. goeth to the whole, the Writ being pleaded by him who is ſuppoſed

poſed to hold the Rent in a *Scire facias* of it. So he is ſuppoſed Pernor of the Profits. But he ſhall ſet forth that he is not Pernor but tenant of part, and it behooves him to ſay in fact, that it is not a rent-ſervice, unleſs it do appear by the Writ, and fine which names not any ſervice &c. *Quare.* that if he be not meſne of the whole, or Tenant of the whole Rent ſervice, where there is no meſne; the writ ſhall abate, aſwell as of a Rent charge, *M.*33 *Ed.*3. *Writ* 921. and becauſe the Tenant do not ſet forth what Rent it is, 19 *Ed.*3. *Writ* 468.

And it is no plea for the Pernor of the Profit of a Rent charge in an Aſſiſe to ſay that another is tenant to a parcel of the Land: alſo although he be tenant of the Land, and it be found by verdict, not upon the Plea of the Party, that a ſtranger is tenant of part, this ſhall not abate the Writ, 22 *H.*6 *fol.*23. *Aſſ.* 11.

And if one diſtrain to my uſe, and I agree and take the rent, I am the Pernor, 6.*R.*2. *Aſſ.*71.

In an aſſiſe of Rent againſt the Pernor of the profits and Tenant, the Pernor ſhall not plead releaſe of the Rent, but may well plead a Releaſe of all actions, *M.*8 *H.*5. *fol.* *Incumbent* 15.

Bryan ſaid, If I grant my rent to *T.* and afterwards bring an Aſſiſe againſt the Tenant, and againſt *T.* as Pernor of the Profits, and *T.* will not plead the grant, now the ter-tenant ſhall plead it, which *Keble* utterly denied, and ſaid that the Tenant ſhall not plead any plea, the Pernor being named in the Writ, 2 *H.*7 *fol.*14. But if the Aſſiſe be brought againſt the Tenant alone, he ſhall plead any plea, and ſhall compell the Plaintiff to make his title, 5 *H.*7. *fol.*34. But where the Pernor pleads in bar, or to the aſſiſe, the tenant ſhall not plead in bar by releaſe or other matter. To *Keble* agreeth *Pigot*, and it ſeems it is becauſe he is not named as Tenant, but as a Diſſeiſor, 31 *Aſſ.P.*31. *Aſſ.*308

In a Writ of entry of a Rent the Pernor of the profits ſhall not plead *out of his fee*, 18. *Ed.*2. *Entry* 73. So neither in a Mortd. of a Rent, 12 *Ed.* 3. *Hors de ſon fee* 30. *M.* 32. *H.*6. *fol.*20. Agreed by *Priſot*, becauſe he ſhall not compell me to make title, 9 *Ed.* 4.11.

In an aſſiſe of Rent it was found, that one not named took the Rent to the uſe of the Defendant, and that he agreed, wherefore he was held a ſufficient Tenant and Diſſeiſor, *M.* 6. *Ric.* 2. *Aſſ.* 71 *Vide* 8 *Ed.* 3. *fol. Mrans de faits* 15. If there be a Pernor not named, in that caſe the Writ ſhall abate, 33 *Ed.*3. *Aſſ.* 456. but he needs not name the ter-tenant. *Vide* 1 *H.*8. *fol.*4.

If the ſervice of the Meſne be arrear, and a ter-tenant make reſcous, the aſſiſe lieth againſt the meſne alone as tenant, but it is neceſſary to name the other as Diſſeiſor. 17 *Ed.*3. *fol.*46. *Aſſ.*75. 33 *Ed.*3. *Aſſ.*456. 19 *Ed.* 3. *Brief* 404. For the meſne is the tenant, and the ter-tenant ſhall not be named but as Diſſeiſor, becauſe the meſne had not made the Diſſeiſin, 31. *Aſſ. P.* 31. *Aſſ.* 308. *Vide Diviſ.* 6. *C.* 3. *Aſſiſe*, & 8 *Ed.* 3. *fol.*53.

It is ſaid, that if the meſne alien his ſervices, and take them back again to him and his Wife, and the Lord diſtrain &c. in an aſſiſe the Wife ſhall be named, but if he alien the rent, reſerving the ſervices, and after take the ſame again to him and his Wife; now in an aſſiſe by the Lord the Wife ſhall not be named. 31 *Aſſ. P.* 31.

Lord and Tenant by 11 s. Rent, the Tenant aliens to *T.* who payes to the Lord 9 s. and after makes reſcous for the 2 s. Now the Lord ſhall not have an aſsiſe of the 2 s. without naming the ancient Tenant, becauſe he is not ſeiſed of the 2 s. by the hands of *T.* *Quare* 8 *Ed.* 2. *Aſſ.* 387. and there it is ſaid, that he ſhall have an aſsiſe of the whole Rent, not of the 2 s. if he hath cauſe of action. *Vide Diviſ.* 8. 12. *Ed.* 4.

In Nuſance you ſhall not name the Land of the Tenant to whom, as you ſhall in an aſsiſe, but Nuſance not without naming the Tenant of the Land, in which, and him that made it, but not againſt the Feoffee, *M.* 18. *Ed.* 2. *Aſſ.* 374.

An aſsiſe for taking profit in another mans ground, ſhall not be maintained againſt the ter-tenant, without ſhewing him the Deed. But where it is againſt a Pernor of the profits, it ſufficeth to ſhew it to the Court, and the party ſhall not have *Oyer* thereof, if the Plaintiff confeſs not himſelfe privy to the deed, *H.* 8 *Ed.* 3. *fol.* 16.

VIII. *Where ſeiſin of one thing ſhall be ſeiſin of another, to have an Aſſiſe thereof, and of what ſeiſin the aſſiſe lieth.*

THe Grantor of a Rent dieth before attorneyment, ſeiſin had afterwards is not ſufficient to have an aſsiſe. But if an Abbot diſſeiſed of his Rent dieth, and reſcous be made to the ſucceſſor that would diſtrain, he ſhall have an aſsiſe, 3 *Aſſ. P.* 5. *Aſſ.* 183. *M.* 32. *H.* 6. *fol.* 6 49 *Ed.* 3. *fol.* 14.

But *Hill* held the Judgment erroneous, where the Warden of an Hoſpitall recovered upon a Reſcous to him made, where the predeceſſor was not ſeiſed, *M.* 15. *Ed* 3. *Aſſ.* 93.

The Heir ſhall never have an Aſsiſe of the Seiſin of his father, *ibidem*, but all the books are with the Succeſſor, where the Predeceſſor was ſeiſed, and the Seiſin continued untill the reſcous, and the Title not diſcontinued in the houſe by his death, 29 *Aſs. P.* 59. *Aſs.* 291. and there the ſucceſſor ſhall recover the arrears due in the life of his predeceſſor, whereto agreeth 34 *Aſ. P.* 3. *Aſſiſe* 314. otherwiſe it is if the predeceſſor were not ſeiſed in deed, 26 *Aſs. P.* 3.

Poſſeſsion of the Guardian is ſufficient for the Heir to maintain an Aſſiſe or Treſpaſſe upon the Statute of 5. *R.* 2. upon the taking away of the ward, 2 *Ed.* 4. *f.* 5. So of the poſſeſsion of a Termor, *ibidem &c. Br. Colour* 47 *acc.*

If

If the father enfeoff his eldeſt ſonne within age, and after entreth as Guardian of the Infant to his uſe, and after enfeoffeth a ſtranger, this is a ſufficient ſeiſin for the Infant to have an Aſsiſe againſt the Feoffee, but not if the father claimed at firſt to his own uſe, 8 *Ed* 3. *fol.* 63 *aſſ.* 149. 8 *aſſ. P.* 15. *aſſ.* 207. *& vide* 16 *aſſ. P.* 9.

Grantee of Common being ſeiſed, grants it over to *T.* who regrants it to him before any ſeiſin had by putting in his beaſts, yet the grantor being outed, now he ſhall have an Aſsiſe upon this regrant, 36 *aſs. P.* 3. *Common* 20. and the grantee of the Common being diſturbed ſhall have an Aſsiſe without taking any other Seiſin, 4 *Ed.* 2. *aſs.* 452.

If husband and wife be joint-tenants of a Corodie, the husband releaſeth and dyeth, the wife demands it, and is denied, ſhe ſhall have an Aſsiſe, for *Cui in vita* lieth not, 2 *Ed.* 2. *Cui in vita* 18. *vide* 17. *Aſs. P.* 2. where the wife had an Aſsiſe of the poſſeſſion of her husband, without other Seiſin before, or after Coverture, *M.* 4. *Ed* 4. *f.* 32. and the ſame Caſe of Corodie agreed againſt *H.* 6 *R.* 2. *Cui in vita* 25.

Tenant for life attorns to a grantee of the Reverſion, and dieth, the grantor enters, and enfeoffs one *J.* but the grantee comes upon the Livery, and becauſe he could not by the doore, he entred by the window, and being half in, half out, he was drawn forth, this was a ſufficient Seiſin to maintain the Aſsiſe, *M.* 8. *E.* 3. *Dures* 17. but Seiſin for half a day after the death of the Tenant for life, was ſaid to be no Seiſin, 12 *H.* 3. *Aſsiſe* 428. See, the putting his Plow upon the Land, and removing of it adjudged no Seſin to have an Aſsiſe, 12 *H.* 3. *Aſs.* 429.

Attorneyment to a grantee of a Seigniorie before the day of payment, is ſufficient Seiſin to have an Aſsiſe of the whole, 34 *H.* 6 *f.* 46. *Aſſ.* 101. *vide Avowrie Diviſ.* 9. 5 *Ed.* 4 *f.* 2.

The Lord who hath been ſeiſed of twelve pence of the two Shillings of Rent, ſhall have a good aſsiſe of the whole, 12 *Ed.* 4. *fol.* 7. *Aſs.* 31. 8 *Ed* 3. *fol.* 12. *Aſſ.* 141. And if there be Lord Meſne and Tenant, the Tenant within age alieneth part to *T.* who payes part of the Rent to the Lord Paramount, this is a ſufficent Seiſin for him to have an Aſsiſe againſt the Meſne for the whole 8 *Ed.* 3. *fol.* 53. *aſs.* 147. 29 *lib. Aſsiſe. pa.* 59. *vide* 8 *Ed.* 2. *Aſs.* 387. *Diviſ.* 7. *F. Heydon* ſaid, that the Seiſin of the Rent of one Termor doth not ſuffice for another, 5 *Ed.* 4. *fol.* 2. *vide* 22 *H.* 6. *fol. Aſsiſe* 10.

Seiſin of Common of anothers beaſts manuring my Land is good to have an Aſsiſe, be the Common in groſſe or appendant, ſo the putting but of anothers beaſts onely to take Seiſin, and I drive them out preſently, 45 *Ed.* 3. *fol.* 25. *Aſſ.* 61. 22 *Aſs. P. Aſsiſe* 228. Seiſin of Land, to which *&c.* is ſufficient to have an Aſsiſe of Common *&c. M.* 15 *Ed.* 3. *aſsiſe* 931.

By recovery of Rent, where another had the profit, a man ſhall be adjudged in poſſeſſion without ſuing Execution, and if the Sheriff put him in poſſeſſion by a *Clod*, this is ſufficient to have an Aſsiſe, 45 *Ed.* 3 *f.* 25. 31 *Ed.* 3 *warr. of Chres* 22. 22 *aſs. P.* 228. 15 *Ed.* 3. *aſſ.* 91. So upon

any

any poſſeſſion given by the Sheriffe, ſo if the Sheriffe put him in poſſeſſion to whom the Rent is rendred by Fine, this is ſufficient to have an Aſſiſe 5 *Ed.*3. *Fine* 96. 3 *Ed.*3. *aſſ.*444. *vide* 37 *H.*6. *f.*35. *f.*36. *vide avowry Diviſ.*9.

One cannot diſtrein the ſame beaſt by which is put in Execution the ſame time, 40 *Ed.*3 *fol*22.

The Lord grants his Rent upon condition, the Tenant attorns accordingly, the grantee refuſeth to perform the Condition, the Tenant afterwards payes the Rent to the Grantee, the Grantor diſtreins, the Tenant makes reſcous, and he brings an Aſſiſe without naming the grantee, *Quære* 15 *Ed.* 3. *aſſ.*95.

A woman ſeiſed of Rent takes a Husband who diſtrains, and upon reſcous they have an Aſſiſe, and the Writ was *diſſeiſivit eos*, but if the reſcous had been before the marriage the Aſſiſe ſhould have been *Diſſeiſivit eam*, 8 *Ed.f.*12. *aſſ.*141. 3 Aſſ.*P.*5 Aſſ.183. *vide* 15 *Ed.*4. *fol.*18. 7 *H.*7. *fol.* 2. 1 *Ed.*3. *fol.*

If the King be ſeiſed of Land after the death of my Leſſee for life, ſuppoſing that he held of him in Fee, and before the *ouſtre le main* ſued forth I enter and am ouſted by a ſtranger, by this *ouſtre*, I ſhall not have an Aſſiſe, *Quære*: but if the Entry was after the *ouſtre le main* awarded, and before the Eſcheator had taken it out of the Kings hands in the Countrey *&c.* It ſeems I ſhall have an Aſſiſe; for it is as a licence to enter to him who hath Right, 10 *Ed.*3. *fol.*2. *Aſs.*156. 10 *Aſſ.P.*2.

Seiſin by the hands of him againſt whom the *Præcipe* lyeth, is ſufficient to have an Aſſiſe of the Rent, and Seiſin by the hands of the Guardian, or termer is ſufficient to the purchaſer, 8 *Aſs. P.* 14. *Aſſiſe* 191. 8 *H.*6.

The Son leaſeth Land to his Father for life, and other Land to his father and mother for their lives, and goes beyond the Seas, the father aliens all in Fee, the ſiſter enters upon the forfeiture to the uſe of the ſon, if he be alive, if not, to her own uſe, and upon outing him the ſon being returned, he ſhall have a good Aſſiſe, 11 *Aſſ.P.*11. *Aſſiſe* 196.

If one parcener enter claiming to himſelf alone, this is a good Seiſin for himſelf to have an Aſſiſe of the whole, 26 Aſſ. *P.* 2. Aſſiſe 233. But generall entry of the one as Heir gives Seiſin to all at their Election, but they may have a *nuper obiit* againſt him who enters, ſo their poſſeſſion for their advantage *&c.* 29 *Aſſ.P.*22.

Where the one Parcener hath the other in Ward, and claims the Rent to her ſelf alone, ſhe being outed ſhall not have an Aſſiſe without naming the other, 36 Aſſ.*P.*1. Aſſ. 325

Where one parcener claims for all, enters upon the diſcontinuee, and being outed, ſhe alone recovers againſt him in Aſſiſe, the others may well enter with her, 21 Aſſ.*P.*19. Aſſ.106.

Yet in this Caſe the Diſcontinuee ought to bring his Aſſiſe againſt her who entred alone; for the wrongfull entry doth not give the others poſſeſſion, 27 Aſſ.*p.*68. 31 Aſſ.*p.*33.

And

And if one Heir in Gavel-kind enter generally, and they are vouched, the demandant may well counterplead, that he which entred had nothing in the Land diſcended, 43 *Ed* 3. *fol.* 19. and therefore if the Heir of him which entred not be to demand his part, he ſhall not ſay, *Quos infimul tenuit* of his part, 43 *Ed.*3. *fol.*16. *fol.*27. 19 *Hen.*6. *fol.*45.

Seiſin of Fealty is not ſufficient to take an aſsiſe of Rent, 20 *H.* 3. *Aſſ.*433. *Vide C.*4. *part.* *in Bevils Caſe.*

But ſeiſin of a Roſe reſerved the firſt two years upon a Leaſe for life, is ſufficient to have an aſsiſe of Rent due afterwards, *M.*15. *Ed.*3. *Execution* 63. 5. *Ed.*4. *fol.* 2.

Upon an *Elegit* the Sheriff makes livery to the Attorney of the Plaintiff, but the Defendant will not go out, whereupon the Attorney departeth not, and upon this ſeiſin the Plaintiff ſhall have an Aſsiſe without taking the profits.

And if a man recover in a *Precipe*, *Mortd.* will lie againſt the Abator, but in the former caſe the Plaintiffe cannot enter without Livery of the Sheriff upon pain of an *Aſſ.* 2 *Ed.* 2 *Execution* 119. And a Leaſe of a Woman who recovers in Dower before execution in deed, although he upon the Land in preſence of the Sheriff, who cometh to make it, is held void, and ſeiſin of the rent reſerved is not ſufficient to have an aſsiſe. *Pigot. Quere.* ¦It ſeemes ſufficient, *45 *Ed.* 3. *fol.* 6. *Scire fac.* 92.

The Heir in ward to the King ſhall not have an aſsiſe againſt him who abated upon the King, for his free-hold continues to him, 8 *H.*4. *fol. Traverſ.* 14. But if the King put me out wrongfully, and enfeoffeth a ſtranger, I ſhall have an aſsiſe againſt him, 18 *H.*6. *fol.*12. 7 *Ed* 4. *fol.*17. But if the Diſſeiſor enfeoff the King and a ſtranger, now a Writ of Entry in the *Poſt* lieth againſt the ſtranger, *per Fitzh. fol.*19.

A man ſhall recover againſt the Heir in ward after the office found for the King, where the aſsiſe was pending before the office, 2 *Hen.* 6. *fol.* 6.

Seiſin of many ſervices which ought not to be paid, ſhall not bind the Tenant in aſsiſe, nor in a *Ceſſavit*, *P.* 12 *Ed.* 4. *fol.* 7. 3 *Ed.* 3. *fol.* 21. *Aſſiſe* 173. 22 *Aſſ. P* 68. *Aſſiſe* 226. And for this if the Grantee of the Lord have ſeiſin of more ſervices, the Tenant ſhall eſtopp him in an aſsiſe by the Deed of his Grantor in reciting the certainty, 28 *lib. Aſſ. P.* 33. *Aſſiſe* 270.

If the Lord diſſeiſe the Tenant who re-enters, the Lord diſturbed of the Rent afterwards, he ſhall have aſsiſe of the ſeiſin had before the diſſeiſin, 9 *Ed.*3. *fol.*8. *Aſſ.* 153. *vide Diviſ.*18.

IX. *Where the circumſtances ſhall be inquired in Aſſiſe, and where in another Action, as well of Plees to the Writ, as in barr, and where for one Plaintiff or Tenant, and not for all.*

IN a Writ of entry in nature of an aſsiſe by an Infant, where the warranty of the Anceſtor was pleaded in bar, the circumſtancas are not inquired, as neither where a fine is pleaded in bar of an aſsiſe. So of a forraign releaſe, if not ſuch as go with the Land, as if he were ſeiſed at the time of the Releaſe, 12 *Ed.*4.*fol.*17.*Age* 18. And upon a forraign releaſe pleaded, it is held error to inquire by aſsiſe of the circumſtances, if it be not adjourned to the County where the releaſe was made, 21 *Aſſ. P.*8. *Error* 79. *Vide Diviſ.*1. *Ca.* 9.

But in an aſsiſe by an Infant, where the Deed of the Anceſtor was pleaded, it is meet to inquire of all circumſtances, as non-age, impriſonment, or where otherwiſe; it ſeemed by *Thorp*, that matter found againſt him ſhall not be allowed, 16 *Ed.* 3. *Diſ.* 6. And it is error, where one hath another title not inquired, where the bar is pleaded againſt him, but if the Tenant plead to the aſsiſe, & the matter is found againſt the Infant, as that his Anceſtor diſſeiſed the tenant who made continual claim &c. now it is at their diſcretion whether they will inquire over for the Infant, 12 *H.*4.*fol.* 20. *Aſſiſe* 50. 37. *Aſſ.p.*5. *vide* 7 *Ed.*3.*fol. Aſſiſe* 139.

A darrein preſentment brought by an infant, where the deed of his Anceſtor was pleaded, he was not put to anſwer it, but *ex aſſenſu* they preſented *ſalvo jure petendi cum ad ætatem pervenerit &c. M.*4.*H.*3. *Darrein preſentment* 22.

A Mortdanceſtor brought by two Infants and a woman, the Vouchee ſaid, that they had an elder brother who abjured and overlived his Father, and were at iſſue upon the ſurvivor, and to the iſſue of the Wife and Infants, they ſay, that he hath his Record of abjuration. But it ſeems although that he hath this at the day, yet the aſsiſe ſhall be taken for the Infants *Quære.* But after the Vouchee made default, and yet the Plaintiff had not the aſsiſe in right of damages, but at large (*Vide Records Diviſ.*3. But if the aſsiſe cannot be agreed whether they be next Heire, this ſhall not hurt, becauſe of this confeſsion by the Record pleaded, for which he recovered, 29. *Aſſ.p.* 11. *Mortd.*28. 4 *H.*6. *fol.*23.

If an Infant faile of the Record, yet the aſsiſe ſhall be at large, 33 *Ed.*3. *Aſſ.*367.

Where many do loſe by default in an aſsiſe, the one ſueth a Certificate on the releaſe of the Anceſtor, and the Plaintiff in the aſsiſe being warned, comes not, and the Jury directed at large to inquire whether it were the Deed of the Anceſtor, and whether the Plaintiff be his next Heire, whether the Deed were by *Dures*, or by *non ſana memoria*, and whether the

Tenant

Tenant were ſeiſed at the time, and whether the Plaintiff hath title afterwards &c. and every circumſtance which the Plaintiff in aſsiſe may plead, 26. *Aſſ. pla.* 5. *Certiff.* 7.

Devon ſaid, upon a Fine pleaded againſt an Infant, the Juſtices inquired of his Title, and if the Jurors give him Title, the Aſſiſe ſhall be taken in the point *&c.* but if they know nothing of his Title the Plea ſtayes, and it is no Title that the Anceſtor died ſeiſed after the Fine, nor that he was ſeiſed and diſſeiſed generally. Otherwiſe it is of a diſcent alledged in a *Mort. d'aunceſtor, Quod non eſt lex, Hill* 19 *Ed.* 2. *Aſſiſe* 410. *vide ſupra Div. if.* 1: *cap.* 10.

In an Aſsiſe againſt an Infant, who pleaded a Barre, and it was found againſt him, it ſhall not be inquired what other Right he hath for the wrong ſuppoſed: It ſeemeth that this is where he ſhall anſwer to the Title of the Plaintiffe and plead in Barre, for otherwiſe upon a Collaterall Barre pleaded, as warranty, *&c.* it ſhall be inqured over for him, 12 H. 4: *fol.* 20. 22 *Aſs.* 50 37 *Aſſ. P.* 5. *Aſſiſe* 328:

But where he pleads warranty in Barre, and it be adjourned for difficulty, whether it ſhall be a Barre in the Caſe, and at the day he will vary, as that he which releaſed, he alledgeth as of Tenant for life, with mean remainder in Fee, when he had the Fee in poſſeſsion, and he could not vary, but the Aſsiſe ſhall be taken and ſhall inquire of this, becauſe he was an infant, *P.* 44 *Ed.* 3 *fol.* 10 *Aſſ* 56. The Circumſtances ſhall be alwayes inquired: the Infant being Tenant pleads to the Aſsiſe without traverſing the Title of the Plaintiff, 28 *Aſſ. P.* 51. *Aſſ* 262 *and* 29 *Aſſ. P.* 12. *Aſſ.* 280. 12 *H.* 4.

An Aſsiſe brought by three where two were within age, he that was of full age was put to anſwer to the deed of the common anceſtor, who ſaid nothing paſſed, and againſt the Infants the Aſsiſe at large, 32 *Ed* 3. *Aſsiſe* 98.

But were he pleaded his Leaſe for life by Indenture to the Anceſtor, and that he entred in his Reverſion, the Infants all anſwered, and all of them ſaid, that the Anceſtor had nothing of his Leaſe, 28 *Aſſ. P.* 22 *aſſ.* 269. But the Infant was not there compelled to anſwer, and *Thorpe* ſaid, that neither the one nor the other need to anſwer, the one being within age, yet he of full age made a Diſcent. 26 *Aſſ P.* 25 *Aſſ.* 284. And note in the former Caſe, 28 *Aſſ. Pla.* the Heir could not ſay againſt the Indenture, that nothing paſſed, but that the Anceſtor had nothing of his Leaſe.

The Deed of the Anceſtor was pleaded in Barre of an Aſsiſe brought by two parceners, the one being within age; he that was of age pleaded the dying ſeiſed of the Anceſtor, and the ſame Title was made for the Infant, the Tenant eſtopped them by his Indenture of Leaſe for life from the ſame Anceſtor, both plead the diſcent, without that that any thing paſſed. *Perſey*, The Infant ſhall not plead this; for then, if it be found for him upon this Deed, where it is not the Deed of the Anceſtor, and the Tenant bring an attaint, the Infant ſhall loſe the Land, where peradventure

venture he hath another Title, for in the attaint the Circumſtances ſhall not be inquired. *Burton* Juſtice, he may have a novel Aſsiſe upon the other Title. *Pigot*, but it ſeems, the Iſſue ſhall be received, and yet the Circumſtances inquired for him, and he ſhall recover upon other matter found for him. *Et ſi hoc non*, there ſhall be inquiry of the Deed, and then Proceſſe againſt the witneſſes, but they were adviſed, 29 *Aſ. pla.*53. *aſ.* 259. *vide Diviſ.*1 *Ed.* 28 *Aſ.* [illegible]6. recovery upon another Title found for him.

And in the like Aſsiſe, if the Tenant make Title as another ſiſter, and that this Land was allotted to her upon the partition, and concludes in Bar againſt her of full age, ſhe ſhall not plead it to the Aſsiſe againſt the iuſant, but ſhall conclude in Barre alſo, and the Infant and the other ſhall anſwer thereto, and yet for the Infant the Aſsiſe ſhall be awarded, 30 *Aſ. pla.*7. *Aſ.*298.

Aſsiſe by an Infant of Land and Rent: To the Land the Tenant pleads *ne unques ſeiſi*; to the Rent, that it iſſued out of the ſame Land, and the Infant was not put to anſwer, but the Aſsiſe at large, *&c. P.* 11 *Ed.* 3. *Aſſ.*86. So where Tenant by the courteſie pleads the Deed of the anceſtor with warranty made to his wife, and their Proceſſe againſt the witneſſes, 35 Aſſ.3: *P* 9. Aſſ.323. But 29 Aſſ. *P.* 53. they would not award Proceſſe againſt the witneſſes, untill the Circumſtances were inquired, and there *P.*17. it is ſaid, that in this Caſe no Proceſſe ſhall be againſt the witneſses.

An Aſsiſe againſt an Infant making Title by the Deed of his anceſtor, the Infant ſaid, that his anceſtor had nothing at the time; and it was found that he was ſeiſed at the time, but that the Rent was granted upon condition, but this verdict is void, becauſe the Rent could not be upon condition without a Deed, and after adjournment the Aſsiſe was remanded by the Infant to inquire whether there were any Deed upon Condition, 33 Aſſ. *P.*15. *M.*33 Ed.3. Aſsiſe 367, *Knivet* ſaid, if the Deed of Feoffment or grant be ſimple Condition, it cannot be found without ſhewing forth the Deed *&c. ibidem.*

X. *What Pleas the Diſſeiſor ſhall plead who hath nothing in the Freehold.*

IN Aſsiſe brought by Husband and Wife, the Diſſeiſor may well plead, that the woman is the wife of another man, and not of the Plaintiff, but he ſhall not ſay, that the Woman with one *W.* as wife of *W.* levied a Fine to him of the Land, although that he concluded to the Writ, for he ſhall not plead any Record in delay of the Aſsiſe, 19 Aſſ. *P.*10. *Writ* 756. but it ſeemeth that he may plead an outlawry, if he have the Record

Record in hand there, and that he was at another time acquitted by his Aſſiſe, and this although he had not the Record in hand, but this goeth to the Action: It was alſo held here, that he ſhall not have the Plea of a Fine, becauſe he is not Tenant: but *Quere* if he ſhall find Miſnomer or Coverture *Schard*, that he ſhall *M.20 Ed.3. Aſſ.120.* and ſee that the Defendant pleaded that he brought a Writ againſt the Plaintiff of the Land, and there he vouched after this Writ purchaſed, and ſo had affirmed him Tenant, and he was ouſted of the Plea, becauſe the Plaintiffe ſaid, that the other was Tenant, and he onely a co-adjutor to the Diſſeiſor, 43 *Aſſ.P.7. Aſsiſe* 350.

A Diſſeiſor may plead any matter to excuſe himſelf from damages and which extinguiſheth not wholly the Right of the Plaintiffe, as releaſe of Action perſonall, entry of the Demandant in parcell pending the Writ, no ſuch named in the Writ, that the Tenant holdeth joyntly with a ſtranger, or that the Plaintiffe at another time brought a Writ of an higher nature, 35 *H.6.fol.13.* ſo that no Tenant is named 16 *Aſſ.P.* 22. and the Coadjutor may plead that there is another Writ pending, but not the Plaintiffe by his Bailiffe, 8 *Ed.3.f.1.Aſs.140.*

See, the Releaſe of Actions perſonall may be well pleaded by them who diſſeiſed the Plaintiffe to the uſe of another named, who takes the profits *&c.* 1 *H.5.f.4. Aſſ.41. vide diviſ.7.C.*

See concerning jointenancy, 35 *H.6.* for if the Plaintiffe chooſe one Tenant, and the other plead jointenancy with a ſtranger, he ſhall be ouſted of the Plea, if it be found accordingly by Leaſe of the Tenant made the day of the Writ purchaſed, yet the Plaintiff ſhall recover, *P.18 Ed.3.Aſſ.77.* and ſee where in an Aſſiſe of Rent, the Tenant pleadeth to the Aſſiſe, the Diſſeiſor ſhall not plead jointenancy of the Land, 31 *Aſſ.P.31. vide diviſ.7 E.*

The Tenant who hath aliened hanging the Writ may well plead every Barre of Aſſiſe, 9 *Ed.3.17. Aſſ.* 155. 12 Aſſ. *P.41.* Aſſiſe 202. and ſhall plead jointenancy, *ibidem*, 12 *Ed.3.* Aſsiſe 115.

An Aſsiſe againſt one who claims nothing in the freehold, but by a Statute Merchant of a ſtranger, the Plaintiff ſets forth how he hath recovered, and hath the Land in Execution by *Elegit*, and that the Defendaut enfeoffed the ſtranger after the Statute acknowledged, ſo the ſame is extinct, the other that he had nothing of his Feoffment, 21 *Aſſ.P.* 28 *Aſſiſe* 220. 8 *Ed.3.fol.1.* he who hath Execution by the Statute may plead jointenancy of ſuch eſtate, *Aſſ.140.*

In an Aſſiſe the Tenant claims as of the grantee of the guardian, and that the Plaintiff entered, becauſe no agreement was made with him for the marriage, and we outed him, 31 *Aſſ.P.26. Aſſiſe* 306. and he which claims nothing but as Guardian, may plead a deed to eſtoppe the Heir by confeſsion of his Father to hold in Knights ſervice, 46 *Aſſ.P.13.*

In Aſsiſe the Tenant ſaith, that the Plaintiff himſelf was ſeiſed at the day of the Writ, and yet is, 27 *Aſſ. P.30.* 35 *H.6.fol.16.*

The Tenant ſaith, that the Plaintiffe had Execution of a Statute againſt him, and that *T.* had Execution upon an *Elegit* againſt the Plaintiff, and that afterwards he had the eſtate, and a good Barre, 38 *Aſſ. P.* 4 *Aſſ.* 331.

Aſſiſe for Executors againſt a ſtranger, who entred into Lands deviſed to them to ſell 39 *Aſſ. P.* 17.

A Diſſeiſor may not plead a Releaſe of Right nor Feoffment, 2 *H.* 7 *f.* 14. nor ancient demeſne, 21 *H* 6 *f.* 57. nor any Plea but *nul. tort. &c.* 2 *H.* 6 *fol.* 2.

XI. *Where a man ſhall be adjudged a Diſſeiſor without inquiry or Confeſſion thereof, and there by failing of Record.*

IN an Aſſiſe the Plaintiffe intitles himſelf by Diſcent, and it is found againſt him, and in an attaint the ſame point is found for him, now the other ſhall be adjudged a diſſeiſor without further inquiry, & ſhall loſe the Land and damages from the time of the firſt Diſſeiſin, but upon the diſcent found in the Aſſiſe, it is requiſite to inquire over of the Seiſin and Diſſeiſin, 8 *H.* 4. 23 *attaint* 14. *vide Diviſ.* 9 *Ed.* 29. *Aſſiſe.* No circumſtance to be inquired of in attaint.

In an Aſſiſe by Husband and Wife, the Tenant pleads in Barre out of the point of the Aſſiſe, and found againſt him, now there is no neeed to inquire of the Seiſin or Diſſeiſin, and becauſe if it be found that the Husband was not diſſeiſed, but the wife onely, yet they ſhall recover 44 *Aſſ. P. Writ* 775. Note, this is to be underſtood where by the Plea implicitly he confeſſeth the ouſtre, 31 *Aſſ. P.* 12. *vide Diviſ* 29.

Upon Releaſe pleaded in a forrein County found againſt the Tenant, he ſhall be judged a Diſſeiſor without more ado, 22 *Ed.* 3. *fol.* 4. *Aſſiſe* 125. 23 *Aſſ. P.* 11. 8 *Aſſiſe P.* 15. *Aſſ.* 190.

If the Tenant plead a releaſe, and the Plaintiffe alledge that it was upon a condition which he performed at another place, and the Tenant demurreth upon ſuch performance pleaded, and it is adjudged againſt him, he is a Diſſeiſor, and the Plaintiffe releaſed the damages recovered, 7 *Aſſ. P.* 2 *Condition* 14. So where the Plaintiffe makes Title, *ſur hors de ſon fee*, pleads in an Aſſiſe of Rent, and adjudged for him upon the demurrer, he ſhall have an Aſſiſe in Right of dammages, 18 *Ed.* 2. *Aſſiſe* 381.

The Tenant ſaith, that there is no Tenant is named *&c.* and if *&c.* the Plaintiff ſaith, that the Defendant diſſeiſed him, enfeoffed an unknown perſon, and took the profits, the Tenant traverſeth the taking *&c.* now upon this found againſt him, he is a Diſſeiſor, and dammages ſhall be inquired of, 30 *H.* 6. *fol.* 1. *Aſſ.* 15. but if he plead to the Writ out of the point of the Aſſiſe, as an Entry depending the Writ, and this be found againſt him, yet it is neceſſary to inquire of the Seiſin and Diſſeiſin, 10 *Aſſ. P.* 24.

Where

Where upon an ill Bar pleaded, and ouſtre confeſſed, the Plaintiffe makes Title, which is found for him, he ſhall recover without inquiry of the Seiſin and Diſſeiſin: ſo if he have pleaded a good Bar, and confeſſed the ouſtre: ſo if he ſaith, left the Aſsiſe came upon the Title, and this is found againſt him, 6 *H.7.f.2. Aſſ.36.* 18 *Ed.2. Aſſ.*381. ſo if a demurrer upon an ill Barre, which confeſſeth the Ouſtre be adjudged for the Plaintiffe, the Aſsiſe ſhall be in Right of Damages, 9 *H.6.f.47.*

The Husband is not a Diſſeiſor for failing of the Record of his wife received, nor by his failer before, upon the which his wife was received, 11 *H.4.f.49. vide Diviſ.2.A.C.E.*

If a Diſſeiſor ſhall be received to plead a Record, although he was at another time acquitted and fail thereof, this ſhall help the Plaintiffe nothing, 20 *Ed.* 3. *Aſſ.*120.

If the iſſue *ſur hors de ſon fee* in Aſsiſe of Rent be found for the Plaintiffe, the Aſsiſe ſhall inquire of damages, 10 *Ed.* 3.*f.*41. *Aſſ.* 159. 10 *Aſſ.P.*18. 37 *aſſ.P.*14.

But 29 *Aſſ P* 49. *Aſ.*286. they inquired of the Diſſeiſin, and there it was found with force. *Nota*, and if the Plaintiff upon this Plea makes Title, and it is found, all who pleaded ſhall be adjudged Diſſeiſors, 39 aſſ. *P.*4. But if one alone make the reſcous, he alone ſhall be impriſoned, 27 aſſ.*P.*8. 18 *Ed.*2. aſſ.381.

In an aſsiſe againſt *W.* and others. *W.* ſheweth that the anceſtor of the Plaintiff had a ſon by one *venter*, and this Plaintiffe the daughter by another and made a Leaſe for life, rendring a Rent, and dyed, the ſon dieth before the day of payment, and we are his heir, and this was found, and that *W.* did not the Diſſeiſin with the others, but commanded one to take Seiſin, yet he was held a Diſeiſor. *Quære*, if this were for the confeſsion of the ouſtre, or for the commandement of a ſtranger, 35 Aſs. *P.* 2. aſsiſe 319.

But where one parcener Leaſeth her part to *T.* after Partition, who Leaſeth at will to *S.* who cutteth graſſe in the Lands of the other Parcener, and ſhe brings an aſsiſe againſt *S.* and *T.* now though the cutting was to the uſe of *T.* and he made not *S.* make any agreement with the Plaintiffe, yet this is no Diſeiſin in *T.* 37 aſs.*P.*8. aſſ.329.

An aſsiſe brought againſt *J.* and *W. John* ſaid that he entred by *W.* and that the Plaintiffe had releaſed to him, and upon the deed denied, it being found for the Plaintiffe, he ſhall recover with further inquiry. *Quære*, for if he doth not confeſs the ouſtre in himſelf, and the other is not found a Diſeiſor, 19 *Ed.* 2. aſs. 308. 50 Ed.3.*fol.*13. *vide Diviſ.*4.

And therefore if the Lord improve, and leave not ſufficient for the Tenant, and afterwards Leaſeth all the improvement to a ſtranger, upon this matter pleaded, the aſsiſe lyeth not againſt the ſtranger, without naming the Lord, for he did not ouſte him *&c.* 8 Ed. 3. 39 aſs.145.

XII. *Pleas after Adjournment in an Aſsiſe, and after demurrer and adjournment thereupon.*

IN *a mort. d' auncestor* the Tenant pleads *hors de ſon fee*, Judgement if, *&c.* The Plaintiffe demurres whether he ſhall be compelled to make his Title, and thereupon adjourned, now in the Bench, the Plaintiff ſhewed not the Deed, becauſe adjourned upon a certain point, 14 aſs. *P.* 17. *Adjournment* 6.

And upon ſuch like Plea the Plaintiff ſaid, that *C.* was ſeiſed of the Rent by preſcription, and granted it to *T.* who deviſed it to *S.* who deviſed the ſame to us, and ſhewed the Cuſtome; the other demurres, becauſe he ſet not down the Deed of the grant of *C.* to *T.* and adjourned, and at the day the Plaintiff ſhewed the Deed, and it was well, becauſe it is purſuant, 38 aſs. *P.* 28. *Shewing* 47.

In an aſsiſe the Tenant ſaid, that his father gave the Land in Tail to *H.* who died, and the Plaintiff claims as heir, whereas he is a Baſtard *&c.* the Plaintiff ſheweth the eſpouſalls, and that he was born within them, the Tenant demurres if he ſhall have the ſpeciall matter, and after adjournment he pleads a divorce between *H.* and the mother *&c.* and it ſeemeth that he ſhall have the Plea, but the divorce was without calling the parties, for which it is no Plea, 39 aſs. *P.* 10. *Baſtardy* 18.

Where a Releaſe with warranty was pleaded in Barre of an aſsiſe, the Plaintiff ſaid, that he which releaſed had it but for his life, the remainder to us in Tail, the remainder to the heirs of the Leſſee, who granted his eſtate and releaſed with warranty, and hereupon a demurrer and adjourned. Now the Tenant ſhall not ſay, that he who releaſed had the Fee, although he were an infant, 44 Ed. 3. *fol.* 10. aſsiſe 59. *vide* 14 aſs. *P.* 15. where an outlawry was enter-pleaded in Barre, and at another day he was received to plead a releaſe, *vide Diviſ.* 12.

In an aſsiſe the Tenant ſaid, that the wife of the Plaintiff was Tenant after poſſibility, the Reverſion to the heir to her firſt husband, the ſecond husband aliened in Fee, the heir entred and enfeoffed us, the Plaintiff ſaid, that the firſt husband deviſed the Land to him and his heirs, the Tenant demurred, becauſe at the time of the Deviſe he had not but a tail ſpeciall: now after adjournment the Tenant ſhall not demurre upon any other point, as the not denying the alienation of the ſecond husband, which takes away the entry of the wife and this husband *&c.* becauſe the demurrer was upon a certain point, 27 *Aſſ. P.* 60. *Aſſ.* 259. So upon a demurrer in another Action, as if a Reverſion paſſed by the name of Lands and Tenements, he ſhall not have advantage afterwards to plead non Attorneyment *&c.* 34 *H.* 6. *f.* 8. and ſo it ſeemeth of a ſpeciall attaint, 11 *H.* 4. *fol* 26.

In an Aſſiſe againſt *R.* and *W.* of Lands in *H. W.* ſaid, that at another time

time be brought an Aſsiſe of the ſame Land in *N.* againſt the Plaintiff who ſaid, that *H.* and *N.* were one Town, and pleaded a recovery in *N.* and they were found to be divers Towns, whereby we recovered, and *R.* as Feoffee of *W.* pleaded the ſame Plea, and a Demurrer upon it, and adjourned without chooſing the Tenant, and it was held that the Plaintiff at the day of the adjournment might chooſe his Tenant, 22 *Ed.* 3. *f.* 5. *Aſſ.* 126.

Vide Diviſ. 6 *B.* where it was demurred, if the wife had 8. *l.* or 40. *s.* by the Deed, and after the adjournment the Tenant would have eſtoppell to demand 8. l. *per ſcire facias*, brought upon the Fine for the 40. *s.* 8 *Ed.* 3. *fol.* 23.

An Aſsiſe adjourned upon a Plea to the Writ, ſuppoſed to be in *Clo.* where at another time the Anceſtor of the Plaintiff levied a Fine of Land in *Co.* the Plaintiff averred the name, upon this an adjournment, and the Writ adjudged good, and the Plea of the Plaintiff good, but the Defendant was at liberty to plead in Barre, and the Aſsiſe not awarded as it ſhould upon the Bar pleaded adjudged naught, where no ouſtre was *&c.* 6 *Ed.* 3. *f.* 1. *Aſſiſe* 168. but if the Plea be found dilatory againſt the one or the other, *Diviſ.* 4. 20 *Aſſ. P.* 4. and where the Plea to the Writ ſhall be peremptory to the one and the other, *Vide* 2 *Ed.* 4. *fol.* 12.

Not attached by fifteen dayes being found by verdict the Tenant, he ſhall not plead in Barre after that it is found by examination *&c.* 6 *Ri.* 2. *Aſſ.* 266. 22 *Aſſ. P.* 19.

An Aſsiſe adjourned upon Demurrer, whether a Barony held of the King might have been aliened before the time of *Ed* 1. to hold of the Feoffer without licence, as other Lands then might, and at the time the Tenant would have pleaded that the alienation was in the time of *Ed.* 1. and could not, becauſe the Aſsiſe was adjourned upon a certain point, 20 *Ed.* 3. *Aſſ.* 122. *vide the Grant of the King, Diviſ.* 8. *and* 22.

In an Aſsiſe the Tenant pleads Recovery *per ex gravi querela* before the Mayor, where the Land is deviſable, the other ſaid, that the Mayor had not authority to hold Plea upon this Writ, the Tenant demurres, becauſe it is an ancient Mayor Town, and the Land deviſable, yet it ſeems it is not of Common Right, but he was received to aver the Juriſdiction *&c.* 39 *Aſſ. P.* 6.

XIII. *Where not attached by* 15 *dayes ſhall be pleaded, and how it ſhall be tried, how the attachment ſhall be made, and how the dayes ſhall be accompteed.*

NOt attached by fifteen dayes is no Plea in an Aſsiſe in the County Pleas, for the Bailiffe is not here to be examined, and it ſhall not be tried

tried by Aſſiſe, for if the Bailiffe be abſent at the Aſſiſe in the Countrey, this ſhall not be tryed by the Aſſiſe, 3 *H.*6. *Aſſiſe* 2. it was tryed by the Aſſiſe, 6 *Ri.*2. *Aſſ.*462.

And this no Plea where the Bailiffe was removed, ſo that he could not be compelled to appear, 22 *Ed.*3.*fol.*12. *Aſſ.*127. if the Bailiffe being demanded comes not, this Plea ſhall be tryed by Aſſiſe 26 *H.*6. *Aſſ.*461.

In an Aſſiſe of an office in the Kings Bench, *non attached &c.* was held no Plea, 9 *Ed.* 4.*fol.*5.*aſſiſe* 29. and it was held no Plea here, otherwiſe it is before the Juſtices aſſigned, 11 *Aſſ. P.*30. *M.*24.. *Ed.* 3.*Aſſ.* 135. and attachment by eight dayes was allowed in this Court, 22 *Aſſ.P.*79. *Aſſ.*227. and a *Tales* was granted returnable the next day, 23 *aſſ.P.*17. 30 *aſ.P.*26. *Articuli ſuper chartam cap.*15.

In an aſſiſe in the Common Pleas, a new attachment was ſued forth, upon a not attached *&c.* 24 *Ed.*3.*aſ.*131.*vide A.* but if the parties had day, and pleaded it not, the Jurors ſhall not take Advantage &c.41 aſſ.*P* 3.

Upon a not attached *&c.* pleaded, it was found by examination, that the day of the attachment, and the day of the Aſſiſe here made 15 dayes, and held inſufficient, becauſe the fifteen dayes were not incurred before the day of the aſſiſe: alſo attachment by Glebe Land is void, for it ſhall be by moveable goods, and ſuch as ſhall be forfeited by outlawry, or by Pledges, 27 *H.*6. *fol.*2. aſſ.14.

But warning of the Party in the preſence of four lawfull men, without the foreſaid pledges, or attaching his goods, held good, 34 *Aſſ. P.*1. *Aſſ.* 311. *vide* 34 *H.*6.*fol.*13. by what things he ſhall be attached.

Not attached *&c.* is no plea where a Franchiſe is granted, 6 *Ri.*2. *Aſſ.*462.

Upon a not attached pleaded, the Bailiffe which ſhould have done it by warrant from the Sheriff, *ut oportet* were ſworn and examined, how they had done it, and it was found that they went to every Town where the Tenants were, and took one beaſt untill the parties or their Bailiffe found Pledges to appear, and every ſtranger that doth this ſhall be adjudged their Bailiffs, but if none find Pledges, and the Sheriff return this, an Action of the Caſe lyeth, and although they do attach by Beaſts in every Town, yet they may take two Pledges in generall for all the Tenants, 8 *H.* 4. *fol.*7. *Aſſ.*43. and ſee there where ſeverall Pledges are taken, if the Sheriff return them in Common, it ſhall be amended *&c.* and attachment made without warrant of the Sheriffe is void, 26 *H.*6. *Aſſiſe* 461.

Upon a not attached pleaded, it was demanded who made the attachment, the Plaintiff anſwered that his ſervant made it, who being demanded appeared not, whereupon the Plea was refuſed, for the Aſſiſe ſhall not trye it, but if it were the Bailiffe of the Sheriffe *&c.* the Aſſiſe ſhall trye it, *per Newton*, 26 *H.*6. *Aſſ.* 461.

And where the Sheriffe being examined, ſaith, that the Bailiffe made it, and the Bailiffe that his boy made it, and the boy being demanded

comes

comes not, for this Aſſiſe ſhall be awarded againſt him without further inquiry thereof, 27 *Aſſ.P.* 67. *Aſ.* 160.

XIV. *Where a Barre in an Aſſiſe ſhall be pleaded to compell the Plaintiff to make his Title, and what Barre ſhall compell him thereunto.*

IN an Aſſiſe of Rent by a Prior the Tenant ſaid, that the Land is the Mannor of *W.* whereof *T.* was ſeiſed, and by proteſtation held it of *N.* and being ſo ſeiſed thereof Leaſed the ſame to *W.* for life, rendring to the Predeceſſor of the Prior 5. l. Rent for the Tithes of the ſaid Mannor, and he was ſeiſed by the hands of *W.* afterwards *W.* died, and *T.* reentred, whoſe eſtate we have. Judgement, whether without Title *&c.* and it was held a good Plea to compell the Plaintiff to make his Title, 8 *Hen.6. fol.*14 *Aſ.*6.

Upon Entry upon a Diſſeiſin of a Rent, the Tenant pleaded in Barre a Rent charge, the Plaintiffe made Title to a Rent ſervice, the Defendant rejoyned that he had diſtreined for it, depending the Action, 12 *Ed.*4. *fol.* 11. 36 *H.*6. *Title* 22. *vide Diviſ.* 26.

In an Aſſiſe for Rent, the Defendant ſaid, that the Plaintiff held by ſo much of the Rent as himſelf, and he took ſo much &c. as of his very Tenant, and if he complained for any other Rent, no wrong &c. 50 *Ed.*3. *f.*18. *aſ.*68.

Hors de ſon fee, a good Plea, *&c. vide Diviſ.*6, 7 *Ed.* 3. *f.*8. *Diviſ.*12. 10 *Ed.*3. *fol.*41.

The Defendant ſaid, that A. whoſe eſtate the Plaintiffe hath in the Seigniory, enfeoffed him to hold by ſix pence for all ſervices, and thereof was ſeiſed at will, and ſhewed the deed; this is a good eſtoppel to compell the Plaintiffe to make his Title, 28 aſſ. *P.*33. aſſ.270.

So to ſay, that he held of the father of the Plaintiff by a leſs rent, or by the ſame Rent, and that he releaſed &c. 41 aſſ. *P.*6. aſſ.343.

Upon *hors de ſon fee* pleaded, the Plaintiff ſhall never have an Aſſiſe without ſhewing a ſpecialty, unleſſe he ſhew divers Diſcents of the Rent. *Quære* 8 *Ed.*2. *Aſſ.*420. *Diviſ.*12.

In an avowry for Rent ſervice, the Plaintiff ſaid at another time he diſclaimed the avowant &c. Judgement &c. and it was held no Plea, *M.*26. *Hen.*6. *avowry* 18.

If upon *hors de ſon fee* pleaded, the Plaintiff maintains that it is within his fee, (as he may) the Tenant may well ſhew eſpeciall matter how the Rent is extinct, *vide Div.*18. *P.*7 *Ed.*3. *fol.*20. aſſ.133.

XV. *Aſsiſe of an office, and how he ſhall make Title, and where he ſhall have an Aſsiſe of the profits or of parcell of them, of Corodie, or of parcell thereof.*

IN an Aſsiſe of office of a Packer, all woolls, cloaths, Cony skins, and thrums, accuſtomed within the Liberty of *London* in *Middleſex*, and firſt intitled himſelf by patent in the Plaint, & afterwards alledged the Diſſeiſin, where the courſe is firſt to alledge the diſſeiſin, and after to ſet forth his title, but it ſhall not abate, for the form and the Plaint is good for the profits belonging to the Office, without complaining; as if a man hath a Corodie, and the bread is withheld from him, he ſhall have an Aſsiſe of this parcell, and if it belong to the office of Packer to have Cony skins, and they be taken from him by a ſtranger, an Aſsiſe lyeth for them, and not of the office, but Diſſeſin of parcell of Rent is of the whole, ſo of Common &c. 22 *H.6.fol.19. Aſ.*10. and an Aſsiſe lyeth of the whole Rent, although he hath received part, *Fitz. fol.*179.8 *Ed.*3.*f.*12.

If a man hath a Corodie of bread and drink, and is diſſeiſed of all or part of the bread, he ought to have an Aſsiſe for all the bread, and ſo for part of the drink, 3 *Ed.*3. but it ſhall be at my choice to have an Aſsiſe of the whole office, 4 *Hen.* 7.*fol.*6. whereto agreeth 30 *Aſſ.P.*4. but there *Shard* ſaid, that he ſhall not have an Aſsiſe of part, if he be ſeiſed of the reſidue, others were of a contrary opinion, *Aſſ.*296.

An Aſsiſe of profits to be taken for keeping of a Park and two *Coltors*, *ſcil.* Over *C.* and Nether *C.* for this every day 1.*d. ob.* and of a robe price 20.*s.* or 20.*s.* and the Plaint was good of the profits, without ſhewing the ſumme certain, and without naming the place where he ought to take it, alſo there is no need to name the parcell of the profits whereof he is not diſſeiſed, 3 *E.*3. *Aſsiſe* 175.

But a man ſhall not be compelled to bring an Aſsiſe of the profits, but he may take his Plaint of the office *cum pertin.* and by this ſhall recover the whole, but it ſeems that the Plaint of an office, and profits ſhall abate, 30 *Aſſ.P.*4. *Aſſ.*296.

And a man may make Plaint of a Corodie alone where it is appendant to an office, and Seiſin of the office is Seiſin of the Corodie, but if he claim it in groſſe, he ought to ſhew the deed *&c. Quare* if he ſhall not preſcribe, 18 *Ed* 2. *Aſsiſe* 377. But ſee that it was holden, that of a thing appendant a man ſhall not have an Aſsiſe where he is not ſeiſed of the principall, as of a Corodie appendant to the keeping of a Port &c. 8 *Ed.*2 *Aſſ* 387.

An Aſsiſe lyeth of the profits, to have 2 *d.* of every Cart which comes upon the Land &c. and is not *in loco certo*. *Quare* 22 *Hen.*6 *fol.*9. *Aſſ.* 10.

An Aſsiſe of an office in the Common Bench, the Writ directed to the Sheriff of *Middleſex*, and not to the Warden of the Pallais, 8 *Ed.* 4 *f.* 16. *Aſſ.*28. and an Aſsiſe of the office of the Clerk of the Crown in the Chancery, brought in the Kings Bench, yet the Chancery is removeable,

and

and the Clerks have no certain place, but where the Judge appoints them &c. 9 *Ed.* 4. *f.*6. *Aſſ.* 29. and there he made Title by Patent of the King by the word *conceſſit*, without alledging, that it was an office before, yet the whole not void, and the Defendant ſhall have an attaint if the Diſſeiſin be found, ſo in an Aſsiſe of a Parckerſhip, it need not be ſhewed how the office began &c. otherwiſe it is of a Rent charge, becauſe this is againſt Common Right, but there againſt the Pernor of the profits he ſhall not make Title, alſo this is an office of Record, and theſe two Courts are as one &c. 9 *Ed.*4 *f.*11. *Aſſ.*29.

An aſsiſe in *York* was awarded upon a *nihil* returned, & the plaint was of the fourth part of the office of Sergeanty of the common Bench in *England*, and it was good, and although removeable, yet *Herl* ſaid, that if he recover here he ſhall have the office in every place, and it is ſufficient to name the place where he is diſturbed, 7 *Ed.*3.*f.*57. *Aſſ.*135. 7 *Aſſ.P.*12. *&c.*

An aſsiſe in 12 Towns, and made his Plaint of the office of Bailiff to have the return of Writs in ſuch a County, and the execution of them, and that he ſhould have two hundred by the year, and ſhall keep all amerciaments, and ſheweth that *S.* who hath the ſaid office in fee by his Deed, granted it unto us for life, and it was moved, that the Return of Writs, Fines and amerciaments, and Hundred, are not Freehold, yet the Plaint is good, becauſe it is of the office it ſelf, and not of the profits &c. But becauſe the Statute of *W.*2. *cap.* 25. ſpeaks of Bailiwick in fee, and he had it but for life, ſo that he could not have a *quod permit.* in lieu wherof an aſsiſe is given, the opinion was, that it did not ly, yet the grantor had fee &c. *H.* 16 *Ed.*2. *Aſſ.*270.

Vide, that in ſuch aſsiſe he ought to ſet down all the Towns where *&c. M.* 18 *Ed.*2. *Aſſ.* 377.

An aſsiſe for keeping of the gate of the great Palace of the Biſhop of *C.* in *Kent*, and made his Plaint ſo, the Biſhop being dead &c. Some ſaid, that the Biſhop ſhall be named, as the Lord of Land in an aſsiſe of Common. Others were of another opinion: and that in aſsiſe of keeping of a Foreſt, the Lord ſhall not be named. *Heng.* in a *quod permittat*, he ſhall name the Lord, ſo here &c. 8 *Ed.*2. *Aſſ.*385. But it was holden that an aſsiſe of an office or of the Profits lyeth againſt the Pernor of the profits, without naming the Tenant, and as to the Pernor of the Profits, he ſhall ſhew nothing, 8 *Ed.* 3. *Mr ans.* 15. but in an aſsiſe of Common it behoves to name the ter-tenant, and ſo in caſe of the Gate, 4 *Ed.* 3. *Aſſ.* 449. and the whole abated by the Tenant, for parcell not being named, 4 *Ed.*3. *Aſſ.*179.

An Aſsiſe of a thing joyned with another thing, where it lyeth not by it ſelf, as when a Corodie is granted of Corne, Bread, Drink, a Chamber, and Stable, I ſhall have an Aſsiſe for all, yet the Chamber and Stable are not Corody by themſelves, nor do paſs without Livery by themſelves; but will paſs by grant as part of the Corody, *P.*31. *H.* 6. *f.* 15. *Aſs.* 16. So the Grantee of a Robe and 10 s. Rent, ſhall have an Aſsiſe

for the whole, 29 *Aſſ.* P 87. *Aſſ.* 277. 40 *Aſſ. P.* 12. and *M.* 16. *Ed.* 2 *Aſſ.* 371.

In an Aſſiſe the plaint was of ſuſtenance, *ſcilicet*, Wine, Clothing, and Hoſtelerage all his life, and it is good without ſhewing in certaine what victuall, and here it ſeemeth that a ſervant of the King being admitted by Writ to a Corody, ſhall not have an Aſſiſe thereof, if he ſhew not the Deed of the Grant of the Abbot, 4 *Ed.* 3. *Aſſ.* 177. And therefore in an Aſſiſe of the Corody, the Abbot pleaded, *hors ſon fee*, and the Plaintiff ſhewed the Deed, *anno* 27. *lib. aſſ. p.* 49. *aſſ.* 255. *M.* 16 *Ed* 2. *Aſſiſe* 371.

In an Aſſiſe of Corody, theplaint was made of ſo much Bread, Drink, and of a barrell of herring, *&c.* to take from year to year at the day of Saint *Michaell*, and it was good being made of a Corody, and not of Rent, although it ſhall be payd at a day certain, 29 book of Aſſiſe *P.* 8. *Aſſiſe* 278.

So a plaint of a Corody to be taken, *De ſeptimana in ſeptimanam, vel de hora in horam, &c.* 29 *Aſ. P.* 55. *Aſ.* 390.

A Corody granted of bread, &c. and Chamber, and Livery for his boy, and a certain ſumme yearly, he brought an Aſſiſe, and it was good for all, yet the boy was not named by his proper name, had not the Freehold, &c. 16 *Ed.* 2. *Aſſ.* 371.

A woman ſhall not have a *Cui in vita* of a Corody, where the husband hath releaſed it, but an Aſſiſe, *H.* 6. *Ed.* 2. *Cui in vita*, 25.

XVI. *Aſſiſe of Eſtovers or of part of them.*

NEwton ſayd, if I have Common of Eſtovers in two ſeverall Woods which are in divers Townes, and I am diſſeiſed of the Eſtovers in one Wood and not in the other, I ſhall have an Aſſiſe, and ſhall make my plaint of the one wood only: 22 *H.* 6. *fo.* 9. *Aſſ.* 10. See there of other profits, and of an Office.

It was ſayd, If the Lord grant me to digg Turves to carry, and ſell at my pleaſure, the ſoile paſſeth, and being ouſted, I ſhall have an Aſſiſe, *Ut de libero tenemento*, 7 *Ed.* 3. *fol.* 43. *Aſſ.* 134.

A man grants to J. twenty Loads of wood to him and his Heirs, and the Deed ſayth, *Quarum* 16 *Charets predict.* I. *habuit ex dono & conceſſione* R *Patris mei*, for houſe boot, &c. and challenged, becauſe hee ſheweth nothing of the grant of *R.* the Father, yet it is good, becauſe the grantee was Tenant at that time, and the Rehearſall is not of the effect of the Grant, for which an Aſſiſe of all, as of the grant of the Defendant was well brought, 20 *Aſſ. P.* 8. *Aſſ.* 217.

Note, when a man maketh plaint to be diſſeiſed of his reaſonable Eſto-

vers

vers, he ſhall not ſay in his plaint, of taking the profit; but the plaint ſhall be of reaſonable Eſtovers, &c. to be taken, *ſcilicet*, Houſe-boote, Hedge-boot, &c. to build a new houſe and to repaire the old, and to encloſe, and to burne in his Hall, Chamber, Kitchin, Brew-houſe, and Bake-houſe, and to have from year to year in twenty acres of wood by view of the Foreſter, or without view, and if the caſe be ſuch at his houſe in ſuch a Town appurtenant, &c. *Trin* 4. *Ed.* 2. *Aſſiſe* 451.

XVII. *Aſſiſe of Common or of parcell thereof, the Barrs therein, and how the Approvement ſhall be made.*

NOte, That Diſſeiſin of part of a Common is Diſſeiſin of the whole, and ſo of a Rent; but a man ſhall have a good Aſsiſe of part of a Corody, &c. 22. *H.* 6. *fol.* 9 *Aſſiſe* 10.

A man ſhall not have an Aſsiſe of Common by ſeiſin taken by the beaſts of his Tenant put in to uſe by his commandement, becauſe it is not lawfull, for common appendant cannot be uſed with other beaſts, then which manure the land, but ſeiſin may be taken by other beaſts put in only to this intent, and driven out preſently: And *Thorpe* ſayd, That if I have Common by ſpecialty for ten beaſts, and I have five of mine own, and put them in with five of a ſtranger, and the Lord take thoſe of the ſtranger, I ſhall not have an Aſsiſe, becauſe there was no wrong done unto me, yet if my Termor of a Common be diſturbed therein, I ſhall thereof have an Aſsiſe, &c. *P.* 45. 45 *Ed.* 3. *fol.* 25. *Aſſ.* 61. 22 *Aſſ. P* 84. *Aſſ.* 228.

In an aſsiſe of Common, the Defendant as Lord infeoffeth for improvement, leaving ſufficient &c. the Plaintiff ſaith, that he is Lord paramount, and that the Defendant holds this whole Town of him, and none of the Statutes gives approvement againſt the Lord &c. adjourned. *Hill* ſaid. It ſeemeth to the Court, that the Tenant may himſelf approve as well againſt the Lord, as againſt another Tenant, whereupon an aſsiſe was awarded to inquire of the ſufficiency, *quod mirum*, becauſe this is confeſſed by the demurrer; and ſee there, that the Lord ſhall have no Common by reaſon of his Signiory, but by reaſon of his Demeſn Land, whereby if he alien the Demeſnes ſaving his Signiory, he ſhall have no common, otherwiſe it is *e contra* 18 *Ed.* 3. *fol.* 43. *Aſſ.* 80.

Aſsiſe of a common as appendant, the Defendant alledged unity of poſſeſsion &c. The Plaintiff ſaid, that the Land was his anceſtors Land, and one *N.* was ſeiſed of the Common as appendant, before the Unity of the poſſeſsion &c. upon this the aſsiſe was awarded, and it was found that *N.* was ſeiſed of common appendant, but that he laid nothing in the Land, to which &c. in fee, but at the will of the Lord, in whoſe hand &c. *Hill*, the Reverſioner is holden, and he not denyed Tenant, and nothing is to be inquired of, but if *N.* were ſeiſed as of common appendant. *Thorp*, he which

which holds at the will of the Lord, cannot be ſeiſed of Common as appendant, but the one Land and the other was in the hands of the Lord, and no man ſhall be bound by a *nihil dicit* of the Tenant in an Aſſiſe when the Plaintiff makes Title, but it ſhall be inquired *&c.* and after the Plaintiff was *nonſuit*, *M.* 15. *Ed.* 3. *Aſſiſe* 94.

An Aſſiſe of Common in groſſe, where upon the matter it appeared, that it was appurtenant, abated 15 *Ed.* 3. *vide appurtenants.*

An Aſſiſe of *Turbary* in *M.* and made Plaint to have Common of *Turbary* in 100 acres of Moore, to dig and carry at his pleaſure, and good, for his will hath relation to have the thing when he pleaſed, not to make an eſtate at will, 7 *Ed.* 3. *fol.* 43. *Aſſ.* 134.

Where the Aſsiſe is taken to enquire of ſufficiency of Common left after incloſure, and found not ſufficient, the ſame Jurors ordinarily by their diſcretion do proſecute upon oath, ſet forth ſufficient common to the Plaintiff, ſo that the Defendant himſelf may incloſe the reſidue, and this is by the Statute *&c. M.* 7 *Ed.* 3. *f.* 67. *Aſ.* 137.

A man himſelf incloſeth in his Signiory, not leaving ſufficient common, and leaves the incloſure to one *A.* and dieth, and one who was ſeiſed before the incloſure (*ut oportet*) brought an Aſsiſe againſt *A.* and others, and found the not ſufficiency, the Seiſin of the Plaintiff before, and that ſome of the Defendants were with the Leſſor, in aſsiſting him when he incloſed, but that they had nothing to do in making the Ditch, yet they were adjudged Diſſeiſors, and the Plaintiff recovered, 8 *Ed.* 3. *f.* 39. *Aſſiſe* 145.

In an Aſsiſe of common appendant, the Defendant ſaid, that the Land which &c. is land newly incloſed, to which common cannot be appendant. The Aſsiſe found it ancient Land, and that the Lord of the Town was thereof ſeiſed, and enfeoffed *R.* who enfeoffed the Plaintiff, and he was thereof ſeiſed, as of common appendant, untill &c. *Herle*, This is a full verdict, that he was ſeiſed as appendant in the Aſsiſe, for the right of the appendancy ſhall be tried in a *Quo jure*, by which he ſhall recover the common and damages, 5 *Ed.* 3. *f.* 15. *Aſſiſe* 167.

One Lord himſelf incloſed to the damage of others, 4 *Ed.* 3. *Itin. D. vide approvement.*

In an Aſsiſe of common appurtenant, it is a good Plea for the Defendant, that he as Lord incloſed, and that at the time &c. one *I.* was ſeiſed, and enfeoffed the Plaintiff after the incloſure &c. and the Plaintiff was compelled to anſwer to this, whether he had any thing at the time of the incloſure *&c.* 4 *Ed.* 3. *Aſſiſe* 179.

In an Aſsiſe of Common in an hundred acres, the Defendant ſayd that the moyety is ſeiſed into the Kings hands, by the forfeiture of *A.* judgment whether without Counſel, and hereupon it was found by examination of the Eſcheator to be by Mets and Bounds, the Plaintiff would have withdrawn his plaint, for this; but could not, 29 *Aſſ. P.* 10. *Aſſiſe* 279.

A Parſon

A Parſon had an Aſsiſe of a common in groſs by preſcription, and it abated not, by the eſcape of his beaſts in the land, pending the Aſsiſe, 33 *Aſſ. P.* 22 *Aſſ.* 310.

In an Aſsiſe of Common of fiſhing as appurtenant, and by compulſion made title by Deed, which was, *Totam partem piſcariæ meæ de S. al D. ſalvo mihi et heredibus meis ſtagno molendini mei de* T. and it was a good title to Fiſhery in the ſame pond, if the Grantor had fiſhing therein before the Grantee, and that within the Precinct &c. and the grantee ſeiſed thereof after &c. And *Fenner* ſaid, If I grant a man Common through all my Manor, I cannot my ſelfe encloſe, but if the grant be ſaving ſuch a parcell of land, he ſhall not have Common there, 34 Aſſ. pla 11. Aſſ. 316.

Common granted to H. and G. and to the Heirs of *G. G.* hath iſſue *B.* and dyeth, *B.* being ſeiſed at the will of H. he being yet alive, grants the Common to a ſtranger, who being diſturbed thereof by the Heir of the firſt Grantor, brings an Aſsiſe, and afterwards upon the opinion of the Court, this matter being found that H. is now dead, and the Plaintiff ſeiſed after the Grant to him, but not to have it but at the Will of H. at the time of the ſeiſin, whereof the Aſsiſe, &c. 37 Aſſ. *P.* 14 Aſſ. 330.

Note by *Nevill* and *Sprigg* Juſtices, That a man ſhall not have an aſſiſe of Common againſt him who diſturbeth him alone without naming the Tenant of the Soyle, *&c. Trin.* 4 *Ed.* 2 *Aſſ.* 449.

Grantee of Common may well grant it over before any ſeiſin had, becauſe it is in him without Livery of any, *&c.* 36 *Aſſ. P.* 3. *vide Common Diviſ.* 3. *ca.* 8.

What ſhall be a ſufficient ſeiſin to have an Aſsiſe of Common, *vide Aſſ. Diviſ.* 8 *ca.* 6. 36. *Aſſ. pla.* 3.

The Tenant of the ſoyl ſhal be alwayes named in an Aſsiſe of Common, *Quod vide*, 4 *Ed.* 2. *Aſſ.* 444.

XVIII. *Aſsiſe of Rent, parcell of Rent, and where, and how he ſhall make his Title.*

IN an Aſsiſe of a Rent Charge, upon Default of the Tenant, the Plaintiff cannot have an Aſsiſe without making his Title, 22 *H.* 6. *fol.* 23. *Aſsiſe* 11.

One joynt Tenant brings an Aſsiſe after the Death of the other, and upon the matter he ſhall recover the arrerages alſo, which incurred before, 33 H. 6. *fol.* 20. Aſſ. 18.

The plaint was, *De redditu dimidij uncij fili de Cotton*, three pounds of Wax for a certain Candle in the Church of *B.* before, &c. at the Feaſt &c. *Et unius lampadis vitrij, & duarum laginarum olei, & unius libri incenſi*, &c. and ſheweth, that he and his predeceſſors had uſed to diſtrain for it, and becauſe this Rent had been before the Statute, it was held that it ſhall

be

be a rent ſervice, for which he needed not make title in the plaint, 35 H. 6. *fol.* 6. and how this ſhall be, *vide* 9 *Ed.* 4 *diviſ.* 16. E. and there the plaint of yarn and three pound of wax, are not of ſeverall Rents, but one Rent, ſo they ſhall be demanded joyntly, and the Aſſiſe good by the perſon, although it be no profit to him, 35 Aſſ. 21. *vide*, where they ſhall not be ſeverall rents, 3 Ed. 3. Aſſ. 175.

Aſsiſe of Rent againſt a Prior, and made title by grant of his predeceſſor for tithes, and held, although the tithes are retained, yet it was not lawfull to detain the rent, becauſe Executory: Otherwiſe it is, if the rent were granted for counſell, or for having a gutter over his land: So if a man holdeth for paling my park anew for the ancient pale, &c. In theſe caſes, the denying of the one is the extinguiſhment of the other, becauſe executory, &c. *Trin.* 9. *Ed.* 4. *fo.* 19. *Aſſiſe* 30 *&* 15 *Ed* 4.

Entry upon Diſſeiſin of Rent upon bar pleaded as to a Rent charge, he made title to a Rent ſervice, and that the Tenant had enfeoffed a ſtranger unknown of parcell, and took the profits which he denyed; now it ſeems that he ought to ſet down the quantity and value of the parcell aliened, ſo if the reſidue be found for the Demandant, the Rent may be apportioned, and if he alledge the value leſſe then it is. *Quære*, if the iſſue ſhall be there upon: And note that a Diſtreſſe taken (hanging the Aſsiſe) ſhall abate it, 12 *Ed* 4. *fo.* 11. *Aſſiſe* 32. *M.* 13 *Ed. Aſſiſe* 109. 20 *Aſſiſe* 3. *P.* 52 *Aſſ.* 288,

Aſsiſe in *H.* The Plaintiff makes plaint of a Rent, the Tenant pleads *Hors de ſon fee*, without ſhewing the certainty of the land, the Plaintiffs wife ſheweth that ſhee was endowed of the land in view by the Tenant, and leaſed it to him again by Deed, rendring the Rent &c. and the Deed was of this Land with other in the County of *M.* rendring the Rent, &c., The Tenant ſaith, that ſix acres parcell, &c. are in the County of *M.* whereof the Rent &c. Judgement. *Hulls* ſaid, that this ſhould not be pleaded without ſhewing the certainty of the land. The Plaintiff ſayd, That the whole is in *H.* and he was not eſtopped by the Rentall of the Deed, that parcell was in the County of *M.* &c. 7 *H.* 4. *fol.* 29. Aſſ. 45.

And an Aſsiſe by two upon a Feoffment to one rendring to them two, &c. *vide* 18. *Ed.* 2. *Aſ.* 381.

And an Aſsiſe of Rent reſerved out of an Advowſon, *P.* 29 *Ed.* 3. Aſſ. 366.

An aſsiſe of Corn upon *hors de ſon fee* pleaded, he made title by preſcription, and the Writ abated, becauſe the Plaintiff claimed in right of his Parſonage not naming himſelfe Parſon, but Prior &c. 12 *H.* 4. *fol.* 20. *Aſſiſe* 49.

An aſsiſe of Rent againſt *J.* and *R.* the Rent found arrear 15 years, that is to ſay, every year a marck; and aſſeſſed damages, and that *R.* was Ter-tenant, but *J.* alone made the Reſcous, but he is not ſufficient for the damages &c *Wich.* all the arrearages ſhall be charged upon the Tenant, and by the Statute that every one ſhall anſwer for his time, he

ſhall

ſhall anſwer the damages for the inſufficiency of the other &c. as *Fitzh.* reporteth, and the Plaint ſhall be as againſt the Tenant, becauſe he is not a Diſſeiſor, 40 *Ed.* 3. *fol.* 24. *Aſſ.* 52. The judgement was, that he ſhall recover againſt the one and the other generally. And note, the eſtate of the Tenant was not after the Diſſeiſin, but alſo before. Moreover the Tenant was not Tenant but for one year, and all the arrearages recovered againſt him, and the damages agree in Common, 40 *Aſſ. P.* 3. *Aſſ.* 130.

What ſeiſin of Rent ſhall be ſufficient to have an aſsiſe. *Vide Diviſ.* 8. throughout. Seiſin of part is Seiſin of the whole. *Diviſ.* 8. and 16. The Defendant ſaid that he took ſo much of the Rent, as he himſelf &c. a good plea 50 *Ed.* 3. *fol.* 18. *Diviſ.* 15.

A Woman ſeiſed of a Rent granted it, and died before attornment, the Tenant attorned, the Grantee ſeiſed, and he in reverſion releaſeth, this is a ſufficient title to maintain an aſsiſe, becauſe a Diſſeiſin found, *T.* 16 *Ed.* 3. *Aſſ* 74. 16 *Ed.* 3. *Releaſe* 56.

Littleton held that a Releaſe was void to the Pernor of the profits, and that yet I ſhall diſtrain, and have an aſsiſe, but I ſhall be barred in a *Formedon* by this releaſe by the admittance, &c. 15 *Ed.* 4. *fol.* 8.

An aſsiſe of 20 s. Rent, and found that the Plaintiff leaſed the one part of the Land &c. rendring for the one 10 s. and the other 10 s. and diſtrained in the one part for the whole, now he ſhall recover for this part only where he diſtrained &c. *Quære* of the damages, *M.* 17 *Ed.* 3. *fol.* 52. *Aſſiſe* 76.

But if the father grant 18. s. rent by one Deed, and 20. s. rent by another Deed, and the ſon confirm theſe Deeds, and further grants 10. s. &c. now one aſsiſe will ly for all the Rents upon the laſt Deed, and he need not ſhew the other Deeds &c. *H.* 12. *Ed.* 3. *Aſſ.* 112.

An aſsiſe of Rent, and made title by grant of *W.* the father for life, and confirmation of the Son after his death, with a clauſe of diſtreſſe, and it may be, that the Tenant for life grant a rent charge, and after his death he in Reverſion confirms it, but this is not good without a clauſe of Diſtreſſe, and then it is a new grant. The Caſe was, that the father granted the Rent, reſerved upon a Leaſe for life, and dyeth, the Tenant dieth, the ſon enters and confirms *ut ſupra &c.* and the title upon both the Deeds good, wherefore the Tenant in Aſsiſe ſaid that the ſonne had nothing in the Land, at the time of the confirmation, the other that he was ſeiſed &c. but this (as at the time) ſhall not be entred, 14 *Ed.* 3. *Aſſ.* 109.

In an Aſsiſe of Rent it was found, that the Land is *hors de ſon fee*; but that he and his anceſtors have been ſeiſed time out of mind &c. and he ſhewed the Deed of purchaſe of the Rent, but not of the commencement, and recovered, yet he claimed it as a Rent ſervice, *M.* 13 *Ed* 3. *Aſſ.* 118. See after.

An Aſsiſe of 2. s. Rent *cum pertin.* the Tenant ſaid, that *W.* was ſeiſed of the Land *&c.* and held it of the Plaintiff by fealty and a Roſe, and the

Plaintiff held it over *R.* One *R.* and *W.* enfeoffed the ſaid *R.* ſo the meſnalty extinct, and we have the eſtate of *R.* and upon this it was adjourned, and *Herl* ſaid, that now he ſhall not compell the Plaintiff to make his Title, becauſe of the adjournment upon the bar, which compells not to make his title, and it may be, that he complained of Rent ſervice, and if he had pleaded *hors de ſon fee*, and he had entitled him to a Rent ſervice, whereas if he had replyed generally within his Fee, you might have pleaded this matter after, *P.* 7. *Ed.* 3. *fol.* 20 *Aſſ.* 133.

An aſsiſe of a Rent was awarded by default without ſhewing what Rent, 8 *Ed.* 3. *fol.* 12. but 8 *Ed.* 3. *fol.* 53. he was compelled to make his title certain &c. and to this agreeth 22 *Book of aſſ. P.* 68. *Aſſ.* 226. So although the Tenant plead to the aſsiſe, yet it ſhall not be awarded without ſhewing what Rent it is, 26 *Aſſ. P.* 6. *Aſſ.* 234.

But it was ſaid, 30 *Aſſ. P.* 5. That where the Plaintiff made Title of an office to ſerve in the Court, and another Title is found for him, yet he ſhall recover *Aſſ.* 297.

An Aſſiſe of Rent to part, the Tenant pleaded a releaſe, and to the reſidue ſaid, that the Plaintiff diſſeiſed him of the Land, and he recovered in an Aſſiſe, and the arrears during the Seiſin of the Plaintiff were recovered for damages, and as to the reſidue that he was ready, and yet is, and the Plaintiff could deny the releaſe, whereby the plaint abated for that, and as to the reſidue of the Rent found due before the diſſeiſin, it was not recovered &c. and part was after, and that he could not recover &c. for he refuſed to pay the Rent, if the Plaintiff would not make him an acquittance, wherefore the Plaintiff recovered, and the damages was apportioned for the Rent before the Diſſeiſin and afterwards. *P.* 9 *Ed.* 3. *fol.* 8. *Aſſiſe* 153.

An aſsiſe of Rent upon a Grant of an Annuity or penſion, and if it be arrear, that he diſtrain in the Lands, this is good. And upon a Rent granted to be taken in the Mannor of *B.* and that he may diſtrain for it in the Mannor of *D. &c.* if they be in the ſame County, both ſhall be ſaid to be in view, and if in divers Counties, then that alone where the Rent is firſt granted to be taken, *&c. P.* 10. *Ed.* 3. *fol.* 19. *Aſſ.* 157. 3 *Ed.* 3. *fol.* 15. *Aſſ.* 172.

But if a man bind all his Lands in a Rent charge in divers Counties, aſſiſe lieth not in one County, 18 *Ed.* 2. *Aſſ.* 380. and if a man hath an annuity, and the Tenant grants by another Deed, that he may diſtrain in certain Lands, aſſiſe lieth, but if this were iſſuing out of the Lands before, both ſhall be put in view, *P.* 29 *Ed.* 3. *Aſſ.* 366.

A man binds all his Lands in *Dale* to a Diſtreſs, this is ſufficient to have an aſſiſe, although he alledge no place certaine, the Tenant ſaid that the Plaintiff had granted the ſame Rent to *T.* being ter-Tenant, whoſe eſtate he hath, and good &c. 3 *Ed.* 3. *fol.* 12. *Aſſ.* 171.

An aſſiſe of Rent, and the Deed was of a Leaſe for life, untill he ſhould pay &c. this is a ſufficient Free-hold to have an aſſiſe, 3 *Ed.* 3. *fol.* 15. *Aſſ.* 172.

In

In an aſſiſe of Rent, where the ter-Tenant, or all the Tenants be named, or the Pernor of the Profits, or the meſne alone. *Vide Diviſ.* 6. and 7. throughout. 3 *Ed.*3 *fol.*21.

An aſſiſe of Rent, the Plaintiff makes his title, that he, and they whoſe eſtate he hath in the Mannor, have been ſeiſed of the Rent time out of mind, &c. and claimed not as parcel nor as appendant to the Mannor &c. and it was not good without ſhewing the Deed, notwithſtanding the ſeiſin, becauſe it is not Rent-ſervice, and of a Rent-charge it behoves always to ſhew a Deed &c. So *Franceſes* ſhall not be claimed by a *Que eſtate* &c. 22 *Book of Aſſiſe, P.*53. *Aſſ* 224.23. *Book of Aſſiſe P.*6. *Vide Annnity Diviſ.* 4. *Vide of Monſtrance ſupra, f.* 13 *Ed.* 3 *Vide Diviſion* 44.

In an aſſiſe of Rent-charge, the aſſiſe found ſeiſin without inquiry of the Deed, and that he came to the Land and demanded the Rent, and there was none ready to pay it, and that he went forth, and after took a diſtreſs, and reſcous was made by a Stranger, not known to the Tenant: *Wilby* ſeemed to think the Demand was not ſufficient, which was not made to the Tenant himſelf, But it ſeems no Law, but here by the diſtreſs after, he hath waved the former Diſſeiſin upon the demand, and the Writ abated for not naming him who made the reſcous, 29 *Aſſ. P.*52. *Aſſ.* 288. *Vide* 9 *Aſſ. P.* 7. Where firſt he would have diſtrained; and reſcous was made unto him, and afterwards he demanded the Rent, and it was denied, and by this demand the firſt diſſeiſin was not waved *&c.*

How Rent ſhall be apportioned, *Vide Diviſ.* 6. and 7.

Circumſtances to be inquired for an Infant in an aſſiſe of Rent. *Vide Diviſ.* 9.

XIX. *Where an Aſſiſe ſhall be taken* in confinio Comitatus, *and what thing ſhall be put in view in an Aſſiſe.*

AN Aſſiſe of Packer of all Wools within the liberty of *London*, in the County of *Midd.* and ſurmiſeth that *Weſtminſter* is within the Liberty of *London*, in the County of *Middleſex*, and *London* is a City by it ſelfe, and County by it ſelfe, yet the aſſiſe was held to be well brought in *Middleſex* and not *in confinio.* But in an aſſiſe of a Rent charge of Lands in divers Counties, all the Tenants ſhall be named *&c.* 22 *H.* 6. *fol.* 9. *Aſſiſe* 10. *Vide* 7 *Ed* 3. *fol.* *Aſſ.* 135. An Aſsiſe of Office in the Common Bench, brought well there, where the Bench at the time was, without naming another place or County.

At the Common-Law a man ſhould never have an aſsiſe of a Rent granted out of two Mannors in two Counties, and if it were a Rent-ſervice, in ſuch caſe the Lord never had a *Ceſſavit*, *M.* 18 *Ed.*3. *fol.*33. *Aſſ.*79. But in the firſt caſe, he ſhall have a Writ of annuity for the Rent, 18 *Ed.*2. *Aſſiſe* 380.

But at this day he ſhall have an aſsiſe in every County, and one joynt patent, and the Juſtices ſhall enter into the two Counties, although there be twenty Counties betweene them by the Statute, 5 *Ed.* 4 *fol.* 3. *Aſſ.* 26. And ſo is the Order, if a man hath common appendant in one County to his Mannor in another County, there ſhall be two Aſsiſes and one Patent, *Fitzh. fol.* 180.

An aſsiſe of Common in *G.* the Writ directed to the Sheriff of *Glouceſter*, the Land in view being in *Wales*, and out of his juriſdiction, and is in no County, nor is Town or Hamlet, but becauſe *G.* is a Barony in the Marches of *Wales*, although the Tenants ſhall be impleaded in the Court of the Lord, yet the Barony it ſelfe (the profit whereof is now demanded) is by the Statute pleadable by Writ in Chancery, directed to the Sheriff of the County adjoyning, whereby the Writ is well brought, and to the reſidue you have pleaded acceptance, the Writ good, and it ſeems it is not material, although it had been challenged before *&c.* 18 *Ed.* 2. *Aſſ.* 282. 8 *Ed* 4. *fol.* 6.

In the aſsiſe of Office for Packer of Wools *ſupra A. Markam* directed what thing ſhall be put in view. *Paſton.* If he who is Sheriff for life be diſſeiſed, the whole County ſhall be in view. *Poole*, If the houſe where the Lane was ſhall now be put in view, then at another time another houſe *&c. ſic infinit. Aſhton*, If he who hath a Corody be diſſeiſed of his bread, the Pantry ſhall be put in view, and afterwards the Writ was admitted good. See the Book 22 *H.* 6. *f.* 9. *Aſſ.* 10.

Aſsiſe of Office in the Bench, the Bench ſhall be put in view, and it ſhall be where it was when the diſſeiſin was done, although it were removed into another County before the bringing of the aſſiſe, for the view ſhall be where the Diſſeiſin began, *per Moyle* 8 *Ed.* 4. *fol* 16.

A man recovers in an aſsiſe of Land, brought in the common Pleas at *E.* and now the Bench is removed in *Midd.* and the Tenant bringeth an attaint in this place, the other ſhall abate it, becauſe not brought in *E.* and this when the attaint is to be taken, if he paſs not his advantage by pleading then, *M.* 6. *Ed.* 3. *fol.* 55, and 56.

An aſsiſe in two Towns, the Jurors have the view but in one, whereby it was remanded to have it of the whole, and to be here *&c.* 24 *Ed.* 3. *fol.* 26. *Aſſ.* 129.

A man grants Rent out of ſuch Lands, and if it be recovered or aliened, that he diſtrain in ſuch Lands; if in the ſame County, both places ſhall be put in view in an aſsiſe, 1 *Ed.* 3. *fol.* 15. *Aſſ.* 169. *Vide Diviſ.* 17. *M.* of this. So if he grant Services with a Diſtreſs in other Lands *&c.* 2 *Ed.* 2. *Aſſ.* 360.

It ſeems that an advouſon, a Knights Fee, nor hundred ſhal not be put in view, and therefore no aſsiſe for Rent granted out of them: but if a Rent be granted of a Mannor and hundred, both ſhall be put in view, 30 *Aſſ. P.* 5. *Aſſ.* 297. alſo a Rent ſhall not be put in view, 3 *H.* 6. *f.* 22.

A man

A man ſhall not have an aſsiſe of ſuite to a Mill of all Corn ſpent in ſuch a houſe, for nothing can be in view, for the houſe ſhall not be, becauſe there is no profit iſſuing thereof, and it ſeems here he ſhall not have *Sectam ad molendinum. Quere*, but if the Suite was of corn growing in ſuch a place, the aſsiſe will lie, *Tr.* 19 *Ed.* 2. *Aſſ.* 399.

XX. *Where the Defendant may plead two or three Pleas to a Writ; and over if found &c. and what Pleas may agree in this point.*

IN an aſsiſe the Tenants ſay, that the Land is in another Town, and if not found, then no Tenant named *&c.* and if found no wrong *&c.* but he cannot have the two pleas after the former, for no man ſhall ſay that the Land is in another Town, if he be not Tenant. *M.* 30. *H.* 6. *fol.* 1. *Aſſ.* 15. But he may well ſay, that part is in another Town, and if found, No wrong *&c.* 12 *Aſſ. P.* 20 *Aſſ.* 199.

In an aſsiſe of Rent, the Bailiff pleaded the Miſnomer of the Town, and if *&c.* that another is Tenant of the Rent, 15 *Ed.* 3. *Aſſ. P.* 95. *Vide Diviſ.* 8.

An aſsiſe againſt *B.F.* and *G.B.* ſaid that he had nothing but after the death of *G.* and there is no ſuch *F. in Rerum Natura*, *G.* pleads jointenancy, and if *&c.* and *B.* was found Tenant, and the Juſtices would not inquire whether *F.* were Tenant, becauſe *G.* pleaded over to the aſsiſe, *Quere* 24 *Ed.* 3. *fol.* 26. *Aſſiſe* 128.

An aſsiſe of Rent, the Tenant pleaded Miſnomer of himſelfe, and if it be not found *&c. hors de ſon fee. Herle*, by the *hors de fee*, the Plea to the Writ is waived. *Ald.* ſaid, that both have been received, *P. Ed.* 3. *fol.* 15. *Aſſiſe* 172. *Et vide* 3 *Aſſ. P.* 9. *Aſſiſe* 186. agreeth with *Herle*, and alſo that after *Hors de ſon fee* is pleaded, he ſhall not plead miſnomer.

In an aſsiſe of Common, the Tenant ſaith that a ſtranger is Tenant to part of the Land not named, and as to the reſidue that he is Lord, and that he incloſed in the time of the other Tenant. 4 *Ed.* 3. *Aſſiſe* 179.

In every caſe where the Tenant pleads to the Writ a thing triable by aſsiſe, if he will, he may well ſay over, and if *&c.* and it ſhall be tried by the aſsiſe, and the Plaintiff ſhall have no anſwer, if it be not to the perſon, as coverture, *&c.* or ſuch matter as is not triable by aſsiſe, as outlary, excommunication, *&c.* For as to theſe the Plaintiff ought to anſwer. But in the other Caſes, although the plea be found againſt the Tenant, the Court will inquire over of the Seiſin and Diſſeiſin. So in a *Juris utrum* where the Tenant Pleads to the Writ, whether it be the Free-hold of the Plaintiff, or the Tenant, he ſhall plead over to the right, and if he do not, the Court will inquire thereof upon his plea found againſt him. So if in a

Mort d'anceſtor

Mordanceſter he plead Jointenancy with his Wife, or that he had nothing but in her right, he may ſay, and if &c. where in his default we will inquire of the right, 40 *Ed.* 3. *fol.* 29.

In an aſsiſe brought by the Maſter and Brethren of the order of the nine orders of Angels, the Tenant ſhall not plead no ſuch Corporation, and if &c. no wrong, becauſe the firſt plea goes in Bar, wherefore he alledged that the Corporation had another name, 22 *Ed.* 4. *fol.* 34.

But ſee it was holden, where the Tenant pleads a Bar, and doth not confeſs the Ouſter, he may well plead over to the Aſsiſe, becauſe there inquiry ſhall be made over of the Diſſeiſin, upon that found againſt him, not ſo where he pleads a Releaſe &c. for he confeſſeth the Ouſter, 22 *Ed.* 4. *fol.* 39.

XXI. *What Diſſeiſin ſhall be adjudged Diſſeiſin with force, and where the Juſtices,* ex Officio, *may inquire of Robbery and force.*

IN an aſsiſe of a Rent-ſervice it was found, that the Tenant made reſcous, but not with force, yet it was holden that this reſcous is force, and a *Capias pro fine* iſſued. But the Plaintiff ſhall recover but ſingle damages, becauſe out of the Statute, not being found *Vi & armis*, 33 *H.* 6. *fol.* 30. *Aſſ.* 18. and where it was found generally, that the Plaintiff would diſtrain, and the Defendant would not ſuffer him, a *Capias* was awarded againſt him, for it is as a reſcous and force, 9 *Aſſ. P.* 7. *Aſſ.* 193. 29 *Aſſ. P.* 49. *Aſſ.* 186. *Vide* the Statute, *W.* 1. *cap.* 36. and *anno* 4 *H.* 4. *c.* 8.

An aſsiſe for feeding his ſeverall, the defendant claims common appurtenant, and this is found againſt him, and becauſe he confeſt the feeding there, this was holden ſufficient to commit him to Priſon, although it was found that he uſed no force, 27 *Aſſ. P.* 30. *Aſſiſe* 153.

In an Aſsiſe the Diſſeiſin found to be without force, but after the Diſſeiſin that he cut down trees, and this was holden a Diſſeiſin with force, *&c.* 30 *Aſſ. P.* 50. *Aſſiſe* 301.

An Aſsiſe by Husband and Wife, the Diſſeiſin found, and that at the time thereof, certain goods of the Husband were carried away, and thereby the Diſſeiſin was adjudged to be with force, and the party ſhall be impriſoned, and this point is enquirable, *Ex officio, &c. M.* 11 *H.* 4. *fo. Judgement* 70. and 7 *H.* 6. *fol.* 32. The Juſtices would not inquire of movable Goods taken away in Aſsiſe, but of Trees cut down by them to be put in damages, 4 *Ed.* 2. *Damage* 10. *Vide*, this is againſt the Statute of *W.* 1. *cap.* 36. And note, that although that this Statute ſpeaks of the time of the King that now is, *ſcil. Ed.* 1. yet the Statute is perpetuall. And ſo it was agreed by the Bench in the reading of *Serjeant Manwood* upon this point

point in his reading, when he was made Serjeant in *Lent Anno 9. Eliz. Reginæ.*

If Husband and wife be diſſeiſed, and moveable goods carried away, he dies, and the wife brings an Aſsiſe, enquiry ſhall not be made thereof for damages: but for trees cut down it is otherwiſe, *H.8.Ed.3.fol.54. Damages.110.8 Aſſ.P.21.*

XXII. *Where the Defendant may relinquiſh the iſſue taken upon his Barre, and may plead to the Aſſiſe, and where he may plead another Plea in Barre,*

IN an Aſsiſe of three houſes, the Tenant pleaded one barre for one, and another for the two, and at the day of the View, the Plaintiff puts one houſe and three chambers, parcell of the ſame houſe in View, now for the two houſes, the Tenant relinquiſhed his Barre, and pleaded to the Aſsiſe. *Moyle*, this ought to be in a releaſe, and ſo it was &c. 34 *H.6.f.19. Aſſ.20.* The cauſe, becauſe there was a thing put in view, which was not in the Plaint. In like manner, the Bailiff or Attorney may relinquiſh this Plea, and plead to the aſsiſe, 34 *H.6.f.42.*

And he that pleadeth a releaſe in an aſsiſe, may well at all times relinquiſh it, and plead to the aſsiſe, and that by Bailiffe, 11 *Aſſ.P.23.* So in Waſt, he which pleadeth a Grant, that he ſhall not be impeached of Waſt, may relinquiſh it, and plead no Waſte done, but it ſeems it was *ex aſcenſu* there, *M.38.Ed.3.fol. Waſte 66.* and in treſpaſſe or detinue, the Defendant may relinquiſh the Iſſue, and plead to the point of the Writ, 2 *Ed.4.fol.14.& 15.*

In an aſsiſe againſt many, two as Tenants plead ancient Demeſne, the Plaintiffe ſaith, that they all did diſſeiſe him to the uſe of one of them who pleaded ancient Demeſne, and he made a Feoffment to perſons unknown, and took the Profits, and to the Plea jointly pleaded, no Law &c. Now he as ſole Pernor of the Profits, would have pleaded the ſame Plea to the Juriſdiction and could not, for he ſhall not have a new Barre in another degree than he took it before, 21 *H.6.f.57. Aſſ.38.*

And ſee, in a Formedon againſt the husband and others, they ſay that a ſtranger enfeoffed them to the uſe of the wife, ſo they took the Profits in his name not named, this is a good Plea, for if at firſt they had pleaded generally *non tenure*, and the other averred him Pernor of the Profits, as he is, he ſhall not plead joyntenancy afterwards, nor in Barre as Pernor of the Profits, nor he ſhall not vouch. So in an Aſsiſe, but ſhall anſwer to the taking of the Profits, or traverſe the Diſſeiſin, *M.3 H.7.f.2. & f.13.*

Where in an Aſsiſe againſt Husband and wife, they plead, and for ſome cauſe the Juſtices will not take the aſsiſe at that day, the husband and wife

ſhall

ſhall not change their Plea afterwards, but ſhe being received upon his default, may well plead another Plea, 11 *H.*4. *fol.*2. *Aſſ.*46. So where husband and wife plead a recovery in a *ſcire facias* upon a Fine againſt *T.* and the Plaintiff ſheweth, that one of the anceſtors of the Wife had execution before &c. Now they ſhall not ſay, that *T.* was Tenant for life of the Leaſe of the plaintiff &c. and the plaintiffs prayed that their appearance might be entred ſpecially, and the wife ouſted of receipt, 29 *Aſſ. P.*1. *Aſſ.*275. Of pleas after adjournment upon plea certain, *vide Diviſ.*13.

If the Tenant plead in Barre, and afterwards wave it, *Shard* would inquire of the Seiſin onely, and upon that found, judge of the diſſeiſin, as well of the Land as of the Rent, and this, although the deed confeſſe not the ouſtre, 13 *Ed.*3. *Aſſ.*117.

He which hath pleaded a Barre, he cannot wave it, and plead to the Writ after Title made by the plaintiff, 1 *Aſſ. P.*17. *Aſſ.*181. but if he plead a Rent charge, and the Plaintiff intitle him to a Rent ſervice, he may well plead again, 12 *Ed* 4 *Aſſ.*32. *vide Diviſ.*1. *&* 2.

An aſsiſe was adjourned, and an Infant who had pleaded an outlawry in Barre, was received to plead a releaſe in Barre at another time, 14 *Aſſ. P.*15. *Aſſ.*203. ſo it was ſaid, where he failed of the Record, 36 *Ed.*3. *Aſſ.*443. *vide Diviſ.*13.

But *vid. E.* 26 *Aſſ. P.*3. That if he plead a Deed or Record, and fail, that he may plead to the aſsiſe after, but not in Barre *de novo*. So upon a recovery pleaded againſt an infant, and found againſt him, he ſhall plead over to the aſsiſe, bnt not a new Bar, 28 *Aſſ. P.*52. *Diviſ.*1.

In an aſsiſe, the Tenant pleaded a Bar, which the plaintiff denied, whereupon the Tenant takes it back, and ſaid, that was he in by Feoffment without wrong, but he was compelled to ſhew the Deed to the Court, and take Iſſue upon it, or elſe he ſhould be committed to the Fleet, 41 *Aſſ. P.* 20. *Aſſ.*344.

See in Treſpaſſe, if the plaintiff reply to the Barre the ſame day, and the replication is not entred, the Defendant may well wave the Barre, and plead a new, 7 *Ed* 4. *fol.*8. But if the plaintiff proceed to imparlance, when he returns to plead, the Defendant ſhall not change the Barre, but may plead that he is in without wrong, 40 *Ed.*3. *fol.*48. and this was after he had imparled at the replication of the plaintiff &c.

The plaintiff prayed the aſsiſe, the Tenant ſaith, that he hath pleaded in Barre before, yet becauſe theſe were new Juſtices, it was held that he ſhould plead *de novo*, and the old plea is not now upon record. But afterward, becauſe the chief Juſtice was the ſame that was before, although that it were by a new warrant, it was holden that the iſſue ſhould be upon the old plea, if he ſhewed it, and they confeſſed it &c. *H.* 19. *Ed.*2. *Aſſiſe* 406.

The Defendant ſhall plead to the point of the Writ, after that he had pleaded in Barre; in no *Præcipe* of Land, but in *mort. d'anc.* and Aſſiſe,

as

as in Coſinage a Fine of the ſame anceſtor was pleaded, Judgement &c. If the Plaintiffe make Title by a grant back again to the anceſtor, the Tenant ſhall not plead another Bar, nor traverſe the point of the Writ, but ſhall anſwer to the replication, *per Finch* 40. *Ed.*3 *fol.*19. *Bracton contra fol.*226. Partition was pleaded in a proper perſon, and a demurrer upon it, becauſe he which pleaded it was in by diſſeiſin, and after the other pleaded to the Aſſiſe, 11 *Aſſ.P.*23. *Barr* 151.

XXIII. *Where a man ſhall plead Barre and conclude, ſo in without wrong, and where the matter ſhall be inquired, and where not, and what Replication thereto.*

IN an Aſſiſe the Tenant pleaded a Feoffment of *J. S.* and ſo in without wrong, the Aſſiſe takes upon them to inquire of the Seiſin and diſſeiſin, without inquiring of the doing wrong, and it was good; For this is but a conveyance, and a Feoffment of *J.S.* ſhall not purge the diſſeiſin before 8 *H.*4 *fol.*14. *Aſſiſe* 42. *vide* 41 *Aſſiſe. P.*20. *Diviſ.*21. *F. vide Diviſ.*1.

A woman Tenant pleaded a Fine of *J.S.* to her and her husband, ſo in without wrong &c. *M.*11. *Ed.*3. *Aſſ.*88. Of the Replication thereof, *vide Diviſ.*24.

The one Tenant pleaded the dying ſeiſed of his anceſtor, and the diſcent to him ſo &c. the other pleaded the ſame dying ſeiſed, and the Land holden of one *I.* who was ſeiſed &c. and granted it unto him ſo &c. The third ſaid, that ſhe held in Dower of the endowment of the ſame anceſtor, and of the aſſignment of the ſaid *I.* and did not conclude ſo &c. but that ſhe was ready to be attendant to whom &c. the Aſſiſe was taken without any Replication, and it was found the Anceſtor did not die ſeiſed, but the aſſignment of Dower by the diſſeiſor or his miniſter was held good *M.*13. *Ed.*3. *Aſſ.*00. *Diviſ.*1.

The Tenant ſaid that his Father was ſeiſed, and enfeoffed *G.* who gave it back again to him and his wife in ſpeciall tail, the father dyed, the woman died, the ſon as their iſſue enters, in whoſe poſſeſſion *G.* releaſed, ſo &c. The Aſſiſe was taken without replication, the Grant found, but that a divorce was made between the Donees by a precontract of the wife, and that the plaintiff, ſiſter and heir of the husband, was ſeiſed after his death, untill the wife and this Tenant ouſted her, but the Title of the Tenant is good by the Releaſe of *G.* in Reverſion, 13 *Ed.*3. *Aſſ* 91.

The Bailiff pleaded a Title, ſo in without wrong &c. the Plaintiffe ſhall not reply, for if it be found for him, yet the Aſiſe ſhall be taken in point of the aſsiſe, but being found againſt him it is peremptory, but he may give his matter of replication in evidence, although it be not in the Roll, 12 *Ed.* 3. *Aſſ.*113.

XXIV. *What Barre ſhall be good in an aſſiſe of Rent.*

IN an Aſsiſe of Rent ſervice, the Tenant ſhewed, that the King ſeiſed it for alienation without licence, and granted it to hold of himſelf, and after the Tenant ſold it to us, and the Plaintiff ſaid that the alienation was in the time of King *Hen.* 3. when it was lawfull to alien without licence, and this was held a good plea, &c. *M.* 20 *Ed.* 3. *Aſſ.* 122. See more *Diviſ.* 13.

Vide Diviſ. 6. *C. G. & Diviſ.* 17. throughout, chiefly *D. R. M. E.* of Barre to compell the Plaintiff to make his title, *vide Diviſ.* 15. throughout.

XXV. *Where an aſſiſe ſhall abate by Entry, uſe of Common, or for diſtreining for the ſame pending the Writ.*

AN Aſsiſe of Rent ſhall not abate by diſtreining for homage pending the Writ, otherwiſe it is, if he diſtrein for Rent of any term, 47 *Ed.* 3. *fol.* 7. *Aſſiſe* 63. 12 *Ed.* 4. *fol.* 11.

If my Bailiff diſtrain without my knowledge, it ſhall not abate my aſſiſe pending &c. but by my agreement after it ſhall abate, *M.* 20. *Ed.* 2. *Aſſ.* 397. So if my Bailiff enter depending my Writ of Land, 39 *Aſſ. P.* 18.

Ceſſavit ſhall abate by a Diſtreſſe taken by the demandant depending the Writ, although that the land was open to his Diſtreſſe at the time of the Writ brought *Trin.* 20 *Ed.* 3. *Aſſ.* 33.

To uſe Common depending the Aſsiſe, ſhall abate it, which it ſhall not do if his beaſts come there without his aſſent, 33 *Aſſ. P.* 22. *Aſſ.* 310.

XXVI. *Where in an Aſſiſe of Rent or land the Tenant giveth name to the Land in view, the Plaintiff ſhall make a new aſſignment, and ſhall ſet forth what is the other.*

IN an aſsiſe of Rent the Tenant ſaith, that the Land in View is 40 Acres parcel of ancient demeſne; the plaintiff ſaith, that the Land is a meſſuage and 20 acres of Land, and makes title; the Tenant ſaith, that this Meſſuage and 20. acres of Land are in another town, and upon this iſſue is joyned: the Aſsiſe ſaith, that one Grange, Dove-houſe, and 40 acres of Land were in view, and none other thing, and that out of it the Rent iſſued, and were in the ſame town &c. and adjourned for the difficulty, 8 *H* 6. *fol.* 612. *Aſſiſe* 5.

The

The Tenant ſaid, that the Land whereof &c. is one acre *hors de ſon fee*, the Plaintiff ſaith, that it is a Meſſuage, and held to be good pleading, and that it is another then the tenant hath ſaid, and if the plaint be of an acre of Land, the tenant may ſay, that it is an acre of Wood. Judgement &c. *Bryan M.*2 *H.*7.*fol.*4. *Aſſiſe* 34.

In an Aſsiſe of four Meſſuages, the tenant ſaith, that they are four toſts, it is a good plea to the Writ, 26 *H.*6. *Aſſiſe* 34.

And in an Aſsiſe of a Mill, if it be found that the grinders are all upon the Land of the Tenant, and reſidue of the houſe, and two poſts, which bear the grinders are upon the Land of the Plaintiff, the Writ ſhall abate becauſe the Plaint ſhould be of a Meſſuage, 44 *Ed.*3.*fol* 13. *Aſſiſe* 455.

An Aſsiſe of 40 acres, and 10 s. Rent, the Defendant ſaid, they are but 20 acres and 5 s. and this he entred without wrong doing, and it was found 40 acres &c. 14 *Ed.*3. *Aſſiſe* 108.

Aſsiſe of the Mannor of *Clo.* the tenant ſaith, that the Land in view was but two Meſſuages and two acres, and pleaded a Fine thereof in another town, 6 *Ed.*3. *Aſſiſe* 168. *Diviſ.*13 *E.*

The Plaint was of acres, paſtures, a Meſſuage; the Defendant anſwered as the nineteen parts of the Land, and pleaded a grant of *I.S.* by Deed inrolled, the remainder to the King, and the Deed was of an office, wherefore the Plea was holden to be naught, but he ought to ſhew that the Land was appertenant to the office, and that he granted the office *cum pertinen.* &c. and then it had been good 7 *H.*7.*fol.*28. *Aſ.*332.

If the tenant plead a Barre to one rent, the Plaintiff may well make title to another, for he may have 20 rents out of one Land, 9 *H.*7.*fol.*7. but if he demand 2 s. rent, and the tenant ſaith, that he holdeth of the plaintiff as the Meſne by a Roſe, and that this is extinct by purchaſe of the Lord Paramount of the tenancy &c. It ſeems he ought to ſay, and if the Demand be a rent charge, Judgement, whether without title, & 7 *Ed.*3.*fol.* 20. *Aſ.*133. but if the Demandant make title in the Plaint, the tenant ſhall plead to it at his perill, 15 *Ed.*4.*fol.*24.

But it was holden, that in an aſsiſe of Land Seiſin of 20 acres, or in a Writ of entry, or in a *Præcipe* of ſo many acres certain, the tenant need not give them a name, but ſhall plead at his perill &c. *P.*5.*H.*7.*fol.*28.

XXVII. *Where a Patent ſhall be pleaded, what Patent may ſerve, and in whoſe hand the Patent ſhall be.*

The Patent of aſsiſe ſhall be in the keeping of the Plaintiff, but when he is received, it ſhall be inquired if he have delivered it to the Clerk of the Aſsiſe, for otherwiſe he hath not warrant &c. *P.* 33.*H.*6.*Aſs.*460.

If the Plaintiff hath not his Patent, the Juſtices have not power to hold

plea, but the aſsiſe being adjourned for the difficulty, day was given to have the patent &c. *M.* 8 *R.* 2. *Aſſiſe* 368.

If at an aſsiſe the Plaintiff ſhew not his Patent, yet the Jury ſhall be called, and if it remain for want of Jurors, day ſhall be given untill the next Seſsions, and it is ſufficient that he ſhew his Patent there, before the aſsiſe be awarded, 83 *H.* 4. *Aſſiſe* 358.

In an aſsiſe it was demurred whether the Commiſsion of *Oyer* and *Terminer* to one Juſtice was determined by a new Commiſsion to another Juſtice, and it was holden againſt the Plaintiff, who prayed time in the Countrey upon the ſame plea, becauſe he hath other matter; the Defendant demands the Patent, the Plaintiff ſaith that it is in the Countrey, and prays adjournment, upon condition that if he hath the Patent he will proceed, and if not, that he ſhould be non-ſuit, and ſo it was done *ex aſſenſu partium*, 34 *Aſſ. P.* 8. *Aſſiſe* 312.

A generall patent is ſufficient to take an aſsiſe without any more, when the Juſtices will, 29 *Aſ. P.* 40. *Aſſiſe* 285.

Leſſee of Land of a Prior aliened in the time of war, had aid of the King, and after a *Procedendo* the Tenant excepted againſt it, that the Plaintiff had no Patent. *Thorp*, We are not charged now with this, becauſe we are out of the Countrey by a Plea in Law, but it is ſufficient if we have it at the taking of the aſsiſe in the Countrey &c. 29. *Aſ. P.* 11.

There was an ancient aſsiſe, and although the Plaintiff had not the Patent, yet becauſe nothing was done therein, it was given back to the Plaintiff without abating, 36. *aſ. P.* 33.

The Patent ſhall be made 15. dayes before the day of aſsiſe, 30 *aſ. P.* 44.

A Patent for divers aſſiſes in divers Counties for Rent of both in common &c. 5 *Ed.* 4. *Diviſ.* 18. *B.*

If the Patent vary in the aſsiſe in the Chriſtian name, it ſhall abate, be it of the Juſtices, or of the Parties, ſo of the Surname: But where the Patent was *Tibi Precip.* where it ſhould be *Vobis*, it was held that it might be amended, *Trin.* 27 *H.* 6. *Amendment* 34.

And if more were named in the Patent then in the aſsiſe, the Writ ſhall abate. So if there wanted ſuch a Clauſe, *in brevi noſtro original. content.* 22 *Book of Aſſiſe, Writ* 760.

XXVIII. *Where a Writ of Aſſiſe ſhall abate by Title made, or by the Verdict, and where the Verdict is good againſt the Confeſſion of the parties, and where not.*

VPon *hors de ſon fee* pleaded, the Plaintiff makes Title as Perſon, not naming himſelfe Perſon in the Writ, it ſhall abate, 12 *H.* 4. *fol.* 20. *Diviſ.* 17.

In

In an aſsiſe of Common, he made title as appendant, and laid the ſeiſin as appendant in *W.* and it was found that *W.* was ſeiſed as appendant, but he had nothing in but at will in the Land to which &c. now this laſt is void, becauſe it is againſt the Confeſsion of the party, whereby the Plaintiff recovered, *M.*15.*Ed.*3.*Aſſ.*94. *Vide* 27. *A.P.*30. Aſsiſe for feed in his ſeverall, the Defendant claimed Common, found the ſeverall of the Plaintiff, damages aſſeſſed, but that the Defendant ſhall not common there but by ſufferance, this laſt is void, *Vide Diviſ.*34.

Infant pleaded, never married, againſt a woman who claimed as Tenant in Dower. The Biſhop certified that they were married, but found not the Diſſeiſin, wherefore he took nothing, 28 *Aſſ.P.*51. *Aſſiſe* 274. *vide Diviſ.*1.

When a releaſe or other bar, ſhe confeſſeth further is pleaded, and it is found falſe, and further that the Plaintiff was not ſeiſed &c. this later is void &c. 40 *Ed.* 3. *fol.* 48.

So if upon ſuch bar pleaded, the Plaintiff make title, and this is found for him, but that he was not ſeiſed, this is void, and the Plaintiff ſhall recover, 28 *Aſſ P* 34 272.

So it is where the Plaintiff is an Infant in the like caſe, for the Verdict at large ſhall not hurt him, 7 *Ed.*3. 71. *Aſſ.*139. *vide Diviſ.*1.

A Plaint made of a Mill abated by Verdict proving, that it ought to have been of a Meſſuage, 44 *Ed.*3. *fol.*13. *Diviſ.* 25.

In an aſsiſe upon *Nul. tort.* pleaded, the Diſſeiſin found, but that the Tenant held jointly with one *T.* not named, the Writ abated. *H.* 33. *Ed.* 3. *Aſſ.*457. 35. *Aſſ.P.*5. *Aſſ.*321.

Upon a bar pleaded, which confeſſed the Ouſter, it was found for the Plaintiff, but that he had not named the Diſſeiſor in the Writ, yet the Plaintiff recovered, 44 *Ed.* 3. *fol.* 23. *Aſſ.* 58. 39 *Aſſiſe P.*16. where the Tenant pleads the bar, and where he that is not tenant indeed. *& Diviſ.*2. failing of a Record, but if the Tenant plead a bar, that he doth not confeſs as a Villain, and this found againſt him, but that the Plaintiff was not ſeiſed &c. the Writ abated, although the iſſue was out of the point of aſsiſe, 31 *Aſſ. P.*12.*Aſſ.*305. *Finch* ſaith the reaſon is, becauſe this Plea goeth to the perſon only, 40. *Ed.* 3. *fol.*48.

An aſsiſe of 20 s. Rent, they found two rents of 10 s. he recovered the one 10 s. 17 *Ed.*3.52. *Le caſe Diviſ.*17.

An Abbot and another recovered in an aſsiſe, the Colluſion was inquired of and none found, but that the Plaintiffs had ſeveral titles, yet becauſe this was not pleaded, and it was only an inqueſt of office, the Plaintiff recovered, 16 *Aſſ.P.*1.*Aſſ.*205.

In an aſſiſe againſt two, the one pleads joyntenancy, the Plaintiff chooſeth the other for his Tenant, the joyntenancy was found by Verdict at large by feoffment the day of the purchaſe of the Writ, and the Plaintiff recovered, *P.*18.*Ed.*3.*Aſſiſe* 77.

In an Aſſiſe the Tenant pleaded a gift in ſpecial tail to his Father and Mother &c. and the Deed found, but that they were divorced for a precontract of the Mother, and that the Plaintiff entred as Heir general of the Father, after the Tenant entred, and had a Releaſe of the Donor, and upon this Verdict he recovered, *Tr.* 13 *Ed.* 3. *Aſſ.* 91.

When a bar pleaded is waved, and the aſſiſe at large, becauſe he pleads not after to the Writ, yet upon this found by Verdict, the Writ ſhall abate, 1 *Aſſ. pla.* 17.

In an aſſiſe the party was not eſtopped to ſay that he was of full age, although that he had ſuffered him to appear by his Guardian, and the aſſiſe found him of full age, yet the Court adjudged him within age, ſo the verdict void, and the Writ abated, 25. *Aſſ. p.* 2. *Aſſ.* 231.

In an aſſiſe againſt two, the one pleads a releaſe, the other jointenancy, and the joyntenancy was found, and that he which pleaded the releaſe ſet to the ſeal of the Plaintiff, and ſealed the Deed, and that the Plaintiff is a Lay-man, not knowing what was writ &c. nevertheleſs the Writ was abated by the Court, 44 *Ed.* 3. *f.* 23. *Writ.* 576.

XXIX. *When the Aſſiſe giveth a Verdict at large, and further, that the Plaintiff was ſeiſed and diſſeiſed, where the Judgment ſhall be according to the Verdict at large, and where upon the ſeiſin and diſſeiſin only.*

IN an aſſiſe of Rent, attornement to the Plaintiff was found after the death of the Grantor, and that the Heir releaſed to him in his poſſeſſion, though now upon the matter the Plaintiff is not diſſeiſed, yet if ſeiſin and diſſeiſin be found, he ſhall recover, 16. *Ed.* 3. *Aſſ.* 74. 16 *Aſſ. P.* 15 *Pigot* thought, that this was not the principal cauſe of the Judgement, and *Quære* of the releaſe.

If in an aſſiſe at large ſpeciall matter be found, and alſo ſeiſin and diſſeiſin, the Court ſhall adjudge according to the ſpeciall matter firſt found, 28 *Aſſ. p.* 17. 32 *Ed.* 3. *Aſſ.* 99.

Where the Tenant pleaded a recovery againſt the Father of the Plaintiff, he made title by diſcent of the Grandfather to the Father, and ſo to him, and found by verdict at large, that the Tenant recovered, but the Father died before Judgment &c. yet the Plaintiff was barred, for this ſhall not be avoided without a Writ of Error, 28 *Aſſ. P.* 17.

In an aſſiſe by a woman, it was found that her Husband was ſeiſed of the whole, whereof two parts now are in demand, made a feoffment, and took again to him and his Wife, in ſpecial taile, and died, the Lord had the Wardſhip of the Heir, and granted it to *T.* who aſſigned the third part to the Plaintiff in Dower without Deed, and alſo gave her 20 s. to hold

hold her content, ſo ſhe was not diſſeiſed, yet ſhe recovered by Judgment upon the ſpecial premiſes, againſt the expreſs Verdict. 17 *Aſſ. p.* 3. *Aſſ.* 208. *H.*17. *Ed.*3. *fol.*6. *Eſtoppel* 217.

An aſſiſe of Rent by an Abbot, it was found Rent-ſervice, and that *B.* his Predeceſſor with the Covent, did releaſe unto the Tenant all their right &c. This is a good Deed, but it was not ſhewed to them, and the Abbot diſtrained, and the Defendants made reſcous, and upon the Diſſeiſin found, he recovered, though the meaning of the Jury was, to bar him by the Premiſes, 7 *H.*6. *Aſſ.*359.

The aſſiſe ſaid, that the Defendants agreed to the Diſſeiſin made to their uſe, and being demanded, wherefore? they ſay, becauſe they made not the Diſſeiſor to agree with the Diſſeiſee, and it was adjudged no agreement, 37. *Aſſ. P.*8. *Aſſ.*329.

Upon a Releaſe pleaded in bar, the Plaintiff ſaid, that he who pleaded it was Tenant at the day of the Writ, and hath aliened it pending it by another name, and recovered againſt him by colluſion, and upon this matter found, and ſeiſin and diſſeiſin, the Plaintiff recovered, 25 *Aſſ. P.*1. *Aſſiſe* 230.

Title was made to Common as appendant, and unity of poſſeſſion found in the Lord, and that he was ſeiſed and diſſeiſed, whereby the Plaintiff recovered, for it is ſufficient in an aſſiſe, if ſeiſed as appendant &c. 5 *Ed.* 3. *fol.*15. *Aſſ.*167.

In an aſsiſe the Tenant pleaded a recovery, ſo in *ſans tort*. and it was found that he brought a *Præcipe* againſt *A.* and *B.* depending which, the King demiſed it to him, and after *A* and *B.* enfeoffed the Plaintiff, and the Tenant ſued a reſummons againſt *A.* and *B.* and recovered, and had right, and the recovery was in a Town of another name, but the Aſsiſe ſaid, that all is the ſame Land, and the place where the aſsiſe is brought is a Hamlet of the ſame Town &c. yet all was held void, and the Plaintiff recovered, for that he was found in by Feoffment &c. *P.*14 *Ed.*3. *Verdict* 29.

It was holden, if an expreſſe verdict be given, and after examination they ſay the contrary, yet judgement ſhall be given upon the premiſes. But if they upon their agreement ſay further, and conclude to the contrary, it is otherwiſe, 3 *H.* 4. *fol.* 19.

In a Treſpaſs *de parco fracto*, the Iſſue was, whether the Wife of the Plaintiff delivered the beaſts, or whether ſhe did beat &c. and it was found that the frankpledge of the Town delivered them, and not the wife, and that ſhe did not beat. *Seton*, where the verdict is doubtfull at the beginning, and afterwards expreſs, we will give our Judgement according to that which is expreſs; alſo the Plaintiff traverſed not, that the wife did not deliver them, but took iſſue upon the beating; whereby he ſhall take nothing if any other delivered them &c. *M.*30. *Ed.* 3. *fol. Judgment* 147. and this laſt was upon demand.

Where in a conſpiracy againſt two, the one was found guilty, the other not, the Jurors were put together again, becauſe this is inconvenient

&c.

&c. and now they were found guilty, *M.* 11. *H.* 4. *fol.* 2.

In an aſſiſe the Tenant ſaid, that his Father died ſeiſed &c. and the Plaintiff was found ſiſter and Heir of her Father, and that the Tenant was born within the eſpouſals, but was not the Son of the Father, and the Juſtices had no regard to this laſt matter, although that the Jurors ſaid, that the Father was in *Ireland* when the Tenant was begotten &c. *M.* 13. *Ed.* 2. *Baſtardy* 25.

Iſſue upon the Plea, that no tenant was named in the Writ, and jointenancy proved: This is good for the Plaintiff, 33 *H.* 6. *fol.* 40. *Aſſ.* 19.

XXX. *Where a man ſhall have an Aſſiſe for divers things, as for Land and Rent, and where for Corody and Land, and where of divers Eſtates.*

AN aſsiſe of 2 s. Rent upon ſeveral reſervations, 17 *Ed.* 3. *fol.* 52. *Aſſ.* 76.

In an aſsiſe of Land and Rent, and found the Rent reſerved upon two acres Leaſed, reſerving 12 d. upon the one acre to him and his heirs, and 12 d. upon the other acre to him alone, *P.* 11. *Ed.* 3. *Aſſiſe* 86.

In an aſsiſe of Land and Rent, and found that to the part of the Land, that it was given to the Plaintiff by Feoffment with the Rent, and to the Reſidue by grant of the reverſion with attornment of the Tenant for life, *Tr.* 14 *Ed.* 3. *aſſiſe* 108.

In an aſsiſe of divers Rents and a robe, and the arrearages &c, by divers Deeds, and one Deed concerning all, 12 *Ed.* 3. *aſſiſe* 112. *Vide Diviſ.* 17.

An aſsiſe for reaſonable eſtovers in a Wood for burning, building, incloſing &c. and for reaſonable eſtovers to dig Turfs in a Moor to cover the houſe, and to burn, good. So an aſsiſe of halfe an acre of Land and of a Corody, *M.* 7 *E.* 3. *aſſiſe* 138. So of Land and of eſtovers, whereof the one at the Common Law, the other by Statute. So an aſsiſe for two Rents &c. 7 *aſſ. P.* 18.

XXXI. *Aſſiſe of Nuſance where it lieth, and for what things, and the bar, and title in it.*

IN an aſsiſe of Nuſance of water miſturned, whereby the Mill could not grind, now although that all the profit be reſtrained, yet becauſe the Nuſance was in another Town then where the Mill was, the Writ is good.

But

But ſome ſay, that if it were in the ſame Town, he might have an aſſiſe of *novel diſſeiſin*, 9 *Aſſ.pla.*19 *Aſſ.*194.

An Action of the Caſe lyeth againſt ſeverall Tenants for Nuſance done, and was brought for diſturbing the high way over the Land of the Defendant to the houſe of the Plaintiff, and it ſeems he ſhall not have this action, but of Nuſance, as for raiſing a Dike croſſe the high way towards the Land of the Tenant, and if part of the water run another way from my Mill, *Marckham* ſaith, that Nuſance lyeth, and not an action of the Caſe, and after Nuſance abated, he ſhall not have an action upon the Caſe, becauſe he might have had it before &c. 2 *H.*4.*fol.* *Action upon the Caſe* 24.

Vide 14.*H.*8.*fol.*38. againſt *Marckham*, that he ſhall have an action upon the Caſe, and ſhall not be put to Nuſance, where but part is reſtrained, &c.

Nuſance for raiſing a houſe a croſſe his way, which he hath from his Meadow to the high ſtreet &c. and good, as of a way claimed from his houſe to his Meadow, or to the Church, and although he be ouſted of all the profits, he is not put to a *novel diſſeiſin*, and it is a good Bar, that the Nuſance was raiſed in the time of his Predeceſſor, and if &c. that the Plaintiff had no way but by ſufferance, ſo in without wrong, 20 *Aſſ.*1 *P.* 18.*Aſſ.*218. and be the way in part, or in all altogether eſtopped, Nuſance lyeth *&c.* 18 *Ed.*2.*Aſſ.*374. for if he recover in Aſſiſe of *novel diſſeiſin*, yet the Nuſance ſhall not be holden away.

In Nuſance, *Quare divertit curſum aquæ* from his Mill, and alſo from ſurrounding certain acres of Land adjoyning, ſo that it grinds not ſo much, nor bears ſo much hay as it was wont, it is a good Count, the Defendant pleaded to the Aſſiſe, and found for the Plaintiff *ſcil.* his freehold, and holden, though the freehold be to the Plaintiff, yet by the Nuſance made, the freehold ſhall be adjudged to the Defendant, and the Writ was good ſuppoſing it, and the plaintiff recovered, and his damages, and the Nuſance was taken away at the charges of the Defendant, 32 *Aſſ.P.*2 *Aſſ.*309.

So note, the Action lies againſt him who levies a Nuſance in my freehold to my ſelf *&c.* But if a Nuſance be levied in another mans freehold to my Mill *&c.* there the Action of the Caſe lieth, and not of Nuſance, by *Priſot.*33 *H.*6.*fol.*29. But ſee what Treſpaſſe or action of the Caſe ſhall abate, as being brought againſt the Tenant of the ſoil for Nuſance levied in his own ground, and is put to Nuſance, 31 *Ed.*3. *Action upon the Caſe* 38. *Infra H.*

An Aſſiſe of a faire levied as a Nuſance to his faire, the Defendant ſhews a Charter from the King &c. Now the plaintiff ought alſo to ſhew his Charter before, or to have preſcribed &c. *Trin* 4 *Ed.*2.*Aſſ* 448

A Nuſance againſt two for caſting up a Dike in the high way, that the Plaintiff hath over their Land *&c.* they ſay, that they have nothing in the Land but imparcenary, and if it be not found *&c.* that at the time of the Nuſance, the Land to which *&c.* was in the poſſeſſion of one *R.* who enfeoffed the Plaintiff, *&c.* and prayed that it might be inquired *&c.*

and it was found for the Plaintiff, whereby he recovered *M.* 18 *Ed.*2. *Aſſ.*374.

Nuſance for not repairing a houſe adjoining to the houſe of the Plaintiff, whereby the rain came upon the Plaintiffs houſe, and upon his walls *&c.* ſo that the timber and the walls were periſhed, and ſo that he could not repair his own houſe, and good, 18 *Ed.*2. *Aſſ.*375.

If I have a Mannor, and one holds a houſe of it by Rent, and I have a way from my Mannor to the houſe, to diſtrain for the Rent which is payable twice in the year, now although that it was never arrear, yet if the Tenant ſtop the way, ſo that I be conſtrained to go by another way, I ſhall have a good Aſſiſe of Nuſance, *M.* 34. *Ed.* 1. *Aſſ.*411.

Nuſance for making of a Pond, ſo that where turfs were uſed to be carried, now he is conſtrained to go three miles about in Circuit, yet becauſe the Lord, and all the Freeholders were agreed that the Pond ſhould be made, ſo that no man could carry turfs over the trench for ſome certain cauſe profitable to the Town, it was held that it ſhould bind the Plaintiff without his agreement, 8 *Ed.*2. *Aſſ.* 413. *vide* 21 *H* 7. *fol* 40.

And ſee, that the like agreement between the Pariſhioners ſhall bind them who agreed to it, if it be but onely for the profit of the Town, and not for the common profit of the Realm, 44 *Ed.*3. *fol.* 19.

Nuſance for making of a pit whereby the Water of my Mill is diſturbed, and runneth not ſo readily as is wont, is good, without ſuppoſing ſtopping, ſtreightning, or diſturning. In like manner, if the Plaintiff be diſturbed of his fiſhing by it, and ſuppoſeth not the fiſhnng to be appendant to any Freehold, for it is it ſelf a Freehold, and as to the Mill iſſue was taken, that the pit was a mile from it, ſo that the water takes it full courſe again, *&c.* ſo not to the Nuſance *&c.* *Quære*, and to the fiſhing he ſaid, that the place where the pit is. *&c.* was his own ſeverall fiſhing *&c. Temp. Ed* 1. *Aſſ.*422.

Nuſans, quia proſtravit ſepem ad nocumentum, &c. Barre, that it was caſt down by the Kings Writ directed to the Sheriff, 5 *H.* 3. *Itin. Aſſ.*426.

Nuſance of water miſturned, the Defendant appeared and ſaid nothing, the Aſſiſe ſaid, that the water was miſturned before the Writ brought, but not to the Nuſance of the Plaintiff till after the Writ brought, wherefore he took nothing by the Writ &c. *P.*16. *H.*3. *Aſſ.*430.

If termer of Land with common appendant, be outed of his Common by making a Dike, the Leſſor may may have an Aſſiſe of Nuſance, 23 *H.* 3. *Aſſ.*437.

Treſpaſſe for ſtopping an open place, by which the fiſh of the Plaintiff have not water, he ſaith not, that the open place was made in his ſoil, or in the ſoil of the Defendant, and it needeth not, but the other may ſay, it is his own ſoil, and thereupon the Writ ſhall abate, for he is put to his Aſſiſe of, and this Writ *vi & armis* doth not lie &c. *P.*31 *Ed.*3. *Action upon the Caſe* 38. *vide ſupra D.*

If

If one Tenant do ſtop &c. all the Tenants through whoſe Lands I have a way, ſhall be named in the aſſiſe of Nuſance, 33 *H.6. fol.29. Action upon the Caſe* 13.

If a man ought to repair a Bridge, by which I have a way from my freehold to the Church, or to go and carry without limiting, to what place to carry, and he repair it not &c. I ſhall have an Action upon the Caſe, and not of Nuſance: ſo if my Land be ſurrounded by not ſcouring of a Dike &c. for theſe lie in *non feaſance*, but if he ſtop a Dike &c. Nuſance lieth, *Tr.* 11. *H.4. fol.81. Action upon the Caſe* 30.

XXXII. *Of what thing an Aſſiſe lieth, and where of Tithes, Toll, the Church yard, Paſſage.*

ASſiſe of Tithes of the tenth part after the Tithes paid to the Parſon, for the Abbot the plaint is good, and of this manner of Tithes this Court ſhall have Juriſdiction, 44 *Ed.* 3 *fol. Juriſdiction* 49.

The Vicar ſhall have an Aſſiſe of the Glebe againſt the Parſon, but it was denyed that he ſhall have an aſſiſe, or treſpaſſe of the Church-yard againſt him, becauſe it is ſpirituall, but *Thirn.* ſaid, that it is his Freehold, and ſo tryable here, *T.* 13 *R.*2. *Juriſdiction* 19 *Quære.*

It was held, that the Statute which gives an Aſſiſe of Toll, gives it of Toll of the Market, and not of the Toll of the Mill, upon which ſuch an aſſiſe was abated, 3 *Ed.*1. *Aſſiſe* 401. But it ſeems by *Herle*, that an aſsiſe lieth, for the Toll of a Mill, of corn growing in ſuch a place, but not to be ſpent in ſuch a place &c. 19 *Ed* 2 *Aſſ* 399. yet in the firſt Caſe the Asſiſe was for the Toll of Corn growing &c. and abated *Aſſ.*401.

Aſsiſe lieth not of ſuit to a Mill, *ut de libero tenemento*, 6 H.3. *aſſiſe* 425.

But ſee that Tenant in Dower of a third part of a Mill, ſhall have the third part in ſeverall diſcharged of Toll, and if the heir take all the Toll, ſhe ſhall have an aſsiſe againſt him, 23 H.6. *Aſſ* 435.

Aſsiſe *de libero Tenemento*, and plaint of a fiſhing, and found that the Tenant and the Plaintiff had common in the fiſhing there, and that the plaintiff is ſeiſed &c. whereby he took nothing. 12 H.3. *Aſſ.*427. and in an aſsiſe of common fiſhing, becauſe the profit is in the others ſoil, he was compelled to make his title, 34 *Aſſ. P.*11. *Aſſ.*316.

Aſsiſe of a paſſage *ultra aquam* in his boat with his young beaſts, oxen, and horſes. It is ſaid, the Aſsiſe lieth not of the office of a Forreſter in right of the office, but in right of the profits, and here grows no profit, but eaſement.

But it ſeems, that Aſsiſe lieth of a paſſage, which is profit *ultra aquam*, ſo of Pontage and Truage by the Statute, *T.*31. *Ed.*1. *Aſſ.*440.

Plaint of a Tenement, of a garden adjacent, ſo of one Toſt, but *Præcipe quod reddat* lieth of them, 22 *Ed.* 4. *fol.* 13. *Vide* 8 H. 6. *acc.*

XXXIII. *Where an Aſſiſe ſhall be turned into an Inqueſt, and taken in the nature of an Inqueſt by* Niſi prius, *and where in a forrein County.*

ASſiſe againſt three, the one pleaded a releaſe, which was denied, the other pleaded to the Aſsiſe, and awarded as Aſsiſe againſt them, and as a Jury againſt him who pleaded the releaſe, *Tr.* 12. *Ed* 3. *Aſſ.* 27.

In a Writ of Entry, a releaſe was pleaded, and depending the Iſſue, the Plaintiff brought a *mort. d'anceſtor* of other Land compriſed in the ſame releaſe, being in the hand of the Juſtices, and thereupon adjourned into the Bench, and it was ſent to the Juſtices that bring the Deed, the ſame day was given in the Writ of Entry, and the Aſsiſe, and at the day the Inqueſt appeared, which was for both the Writs, and the Tenant made default, and *Petit cape* was awarded upon the one Writ, and the other, and he made default another time again, whereby Seiſin was awarded in both the Writs without damages, becauſe the Aſsiſe was turned into an Inqueſt, *Temp. Ed* 1. *Feoffments* 112. *Quare* of the Caſe, for in a *mort. d'anceſtor*, the Proceſſe is Summons and reſummons, and not *Petit Cape.*

In an Aſsiſe againſt *J.* and *W. J.* ſaith, that he entred by *W.* to whom the Plaintiff hath releaſed, and thereupon the aſsiſe is charged in nature of an Inqueſt, and ſhall not inquire further of the Seiſin or Diſſeiſin upon the releaſe proved falſe; and ſome ſaid, that in ſuch caſe where the Iſſue is upon the releaſe, and the Aſsiſe taken in manner of an Inqueſt, the others who pleaded to the Aſsiſe are without day, H. 19 *Ed.* 2. *Aſſ.* 408.

XXXIV. *Where the Defendant may plead to the Writ after he pleaded to the Juriſdiction, and where in* Barre, *and what Plea the Defendant may plead, when the Plaintiff is within age.*

THe Tenant pleads to the Juriſdiction, the Plaintiff makes a new aſsignment, the Defendant ſaith, that it is in another Town, 8 H. 6. *fol.* 12. *Diviſ.* 25 *A.* 21 H. 6. *fol.* 57. *Diviſ.* 21. *B.*

It is ſaid, that the firſt exception ſhall be to the juriſdiction, then to the Perſon, then to the Court, then to the Writ, then he may plead in Barre, *M.* 15 H. 6 *fol* 14.

But matter apparent in the form of the Writ he may plead, before he plead to the Juriſdiction, 8 *Ed.* 4. *fol.* 3. & 5. and it is ſaid, that the exception

tion may be to the Writ, before it be to the Count, if there be not matter apparent, which *ut amicus curiæ*, he may plead before to the Writ, 19 *H.6.fol.*10.

In an Aſſiſe, it is no Plea to ſay, that the Plaintiff is of full age, where he is received by his guardian, if he plead not a releaſe, or other thing done by him, as being of full age, and upon ſuch thing pleaded he ſhall not be eſtopped to averre him to be of full age, becauſe he hath admitted him by guardian before, and the plaintiff being adjudged within age, the Tenant pleaded the ſame plea in Barre, which he had pleaded to the Aſſiſe before. *M.* 12 *Ed.*3. *Aſſ.*116. 12 *Aſſ.P.*37. *Aſſ.* 201. *Diviſ.*5. where he ſhall plead to the Aſsiſe or in Barre againſt an Infant, *vide Diviſ.* 46.

Vide 48 *Ed* 3.*fol.*10. that he who hath accepted an Infant by Attorney ſhall be eſtopped to ſay afterwards that he is within age *&c.*

XXXV. *Aſſiſe for Tenant by Statute Merchant, Staple or* Elegit, *of often Diſtreſſe, or to depaſture his ſeverall.*

TEnant by Statute Merchant, brings an Aſsiſe, and depending it the Term expires, it ſeems the Writ ſhall abate, as in Ward at the common Law, for he ſhall not recover here all in damages, as in Waſte by *Paſton, Quare,* 11 *H.6.fol. Aſſ.*9 *W.*2.*cap.*19.

If the Tenant ſay, that he is not tenant of the freehold named, the Plaintiffe may well ſay, that the Tenant entred claiming by grant of the Tenant by Statute Merchant, who had granted to him his eſtate before, and a good Count, though another hold the freehold, 24 *Ed.*3. *fol.*31. *Aſſiſe* 130.

If damages be recovered againſt him, who is bound to me in a Statute, and after he enfeoffe me, he which is recovered ſhall have a good *Elegit* againſt me, and I ſhall not extend the Statute againſt him, 21 *Aſſ.P.*28. 38 *Aſſ P.*4 *Aſſ* 331.

Aſsiſe by Statute Merchant againſt an Infant, 28 *Aſſ.P.*51. *Aſſiſe* 262.

Aſsiſe of Rent, and the Plaint, that the Tenant ſuppoſing that he held of him, diſtreined the beaſts of his Plow, ſo that by often diſtreſſe, he could not take the profits of his Land, the Defendant juſtified for fealty and eſcuage *&c.* in right of his wife, and becauſe they are are not valuable, it ſhall not be intended, that it can be often diſtreined, the Plaintiff ſaith, that he holds not of the Defendant, but durſt not demurre; for then the Aſsiſe doth not ly, nor of ſuit whoſe value cannot be extended, *Quare de* fealty and homage, but of the ſuit it hath been maintained, and the Tenant ſhall have this Writ againſt the Lord mediate or immediate alone, and he ſaid, that he holdeth of *S.* who holdeth of the Defendant, and held a good Plea, 27 *Aſſ.P.*51. *Aſſ.*257. but *Fitzh.fol.*178. ſaith, that it lieth of a rent charge, and that it lieth not for homage, fealty, nor ſuit, *vide* 28 *Aſſ.P.*50.

In

In an Aſsiſe, the Tenant ſaith, that the Plaintiff himſelf is ſeiſed of the Freehold, the day *&c.* and yet is, this is but to the Aſsiſe. The plaintiff ſaith, that this is his ſeverall, and the Defendant depaſtured it, and prayeth Aſsiſe by the Statute; the Defendant claims Common there, and found the ſeverall of the Plaintiff to his damages, but they ſay, that the Defendant had not Paſture there, but by leave, but this is contrary to his confeſsion; wherefore the Plaintiff recovered, and the Defendant was impriſoned. It was ſaid, that this was againſt the Law, becauſe the plaintiff took not advantage of the confeſsion *&c.* 27 *Aſſ. P.* 30. *Aſſiſe* 253. *W.* 2. *Ca.* 26.

Aſsiſe for paſturing his ſeverall, and there was turfs there. *Hanck*, it appears that the Freehold is the Plaintiffes, for the Record ought to make mention of the diſſeiſin againſt the Statute, *Tr.* 11 *H.* 4. *fol.* *Aſſ.* 16.

Vide per Fitz. fol. 178. the Plaintiff in the Aſsiſe ought to wave the poſſeſsion.

XXXVI. *Aſsociation,* ſi non omnes, *and how the Records ſhall be demanded upon change, or death of the Juſtices, and how the Juſtice in an eſpeciall Aſſiſe ſhall demean them.*

IN Aſsiſe, the Patent of aſſociation was firſt to *J.* and afterwards another to *W. Newton*, when *J.* was admitted by the firſt Patent, the later to *W.* was void; for it was not directed to the firſt Juſtices, and to *J.* but to them onely. *Fort.* agreeeth, and in the generall asſiſe they adjourn the Aſsiſe by Proclamation untill the next Seſsions, and if the Aſsiſe be purchaſed after, there needs no new Precept, but in a ſpeciall Aſſiſe, if they make their Precept before the day of Aſsiſe, it is void, and the Juſtices of a generall Aſsiſe ought to be there at the day, otherwiſe it is of a ſpeciall Aſsiſe, if the party keep them not, then if the King aſſociate one who will not come, I am in a miſchief, whereby it ſeems in a ſpeciall Aſsiſe no aſſociation lieth: and if the King aſſociate two by ſeverall Patents, the firſt ſhall be received, and if both at one day, it is at the choice of the Juſtices to have the one or the other, *M.* 32 *H.* 6. *fol.* 12. *Aſſiſe* 17.

Fitzh. ſaith, *fol.* 186. 187. that by the Regiſter, aſſociations lie upon aſsociation.

If the eſpeciall asſiſe have this ſpeciall clauſe, *& iis quos ſibi aſſociavimus*, it ſeems aſſociation well lieth, *Fitzh. fol.* 186.

If a Writ of Aſſociation be delivered to the Juſtices, and the aſſociat hath not his Patent to ſhew to the Juſtices, they may go before without him, and he ſhall not be with them as a Judge, *&c. H.* 5 *Ed.* 4 *Aſſ.* 459.

A generall asſiſe by two, whereof the one is aſſociate to the Juſtice, this ſhall abate the whole asſiſe, for he may not be his own Judge, and he cannot be nonſuit, to the intent that the other may ſue alone, for the other

Juſtice

Juſtice cannot award a non-ſuit without him, 44 *Aſſ. P.* 3. *Aſſ.* 356. 54 *Aſ. P.* 3. 8 *H.* 6. *fol.* 21.

Vide, that one Juſtice of Aſsiſe with the Clerk took an aſsiſe *non expectata præſentia alterius.* Yet he that was abſent may certifie the Record upon a *Certiorare*, 11 *H.* 7. *fol.* 5.

If there be only two Juſtices, and the one, or the Chiefe is in the Kings buſineſs and cannot come, the King may make another Juſtice, and aſſociate the other to him &c. 28 *Aſſ. P.* 2. *Fitzh.* 187.

If a Writ *de ſi non omnes* be generall for all the aſsiſes, it ſhall be entred upon record, and ſhall continue for the Juſtices for their Warrant to take other aſsiſes, but if the Writ be to take ſpeciall aſsiſes, it ſhall be annexed to the record, and ſent as parcel thereof when it ſhall be removed, 16 *Ed.* 3 *Aſſ.* 73. 16 *Aſſ. P.* 6.

Aſsiſe, all the Juſtices but one came, whereupon the Tenants pleaded the outlary of the Plaintiff, and it was ſaid to them to have their record at a day, and at the day the Juſtices came not, and at the re-attachment the ſame Juſtices came, and one Tenant pleaded a Releaſe, where he had pleaded to the Record before, becauſe within age; and it was adjourned for the difficulty, at which day one of the ſaid Juſtices came not, and the other which was with him before came, and the 3. who came not before. And it was holden, that the *ſi non omnes* which was before the re-attachment, ſhould ſerve for the whole plea. They may alſo well record the plea pleaded before the re-attachment, for the record is entred before them, and have their commiſſion with them &c. *Lege M.* 14 *Ed.* 3. *Aſſ.* 110. And the chiefe may ſend the records of one journey, abiding with him, without a Writ upon adjournment, 14 *Aſſ. P.* 15. *Aſſiſe* 203. and note, that in ſuch caſe where two Juſtices are, and the aſſociation is with a *ſi non omnes*, and the one dieth, the ſecond may proceed, *Fitzh. fol.* 187. and one patent is good for ſeverall aſsiſes, *ibidem.*

If an aſsiſe be put without day, by the non-comming of the Juſtices, and after new Juſtices be made, a Writ ſhall iſſue to the old Juſtices to deliver the Records to the new ones, and this Writ ſhall not be indorſed, but the others ſhall deliver it by indenture with the Writ, 9 *H.* 6. *fol.* 4. *Aſſ.* 7.

Vide 1 *H.* 7. *fol.* 9. Of a fine taken in the Countrey, and the Juſtice dieth.

Juſtices of aſsiſe aſſeſs fines by their diſcretions, but amerciaments ſhall be affiered, and they may command ſilence upon a pain, and impriſon Jurors who will not take their oath, or fine them, and amerce the Sheriff if he will not return the ſpeciall aſsiſe, *M.* 7. *H.* 6. *fol.* 13, and 14.

XXXVII. *When Proces ſhall be made, and when the Tenant ſhall be put to anſwer, and where the Aſſiſe ſhall be demanded and amerced.*

IN aſſiſe no proces ſhall be made againſt the inqueſt until the Plaintiff hath made his Plaint, for there is no Warrant before, 39 *H.6. Aſſ.* 24. 32 *H.6. fol.* 12. But ſee, that the Original it ſelf contain *Venire fac. duodecim*, and the patent to the Juſtices that he hath ſent the Sheriff to cauſe the aſsiſe to come, at what day and place the Juſtices ſhall aſsigne. And it ſeems this is intendedly the Precept which the Juſtices make to the Sheriff, *Sed Quære*. See the old *Natura Brevium*, *fol.* 208. What Precept the Juſtices in a ſpeciall aſsiſe ſhal award, untill the day of the Aſſiſes. *Ideo Quære, M.* 32 *H.6. fol.* 12.

The Tenant would not anſwer until the aſsiſe was called, whereupon he was called, but not upon iſſues &c. *P.* 3 *H.* 6. *Aſſ.* 466. But a *Habeas corpor.* was awarded, and at the day they were called upon iſſues, and all agreed, *M* 37 *H.6. fol.* 26. and 27.

But in an aſsiſe where recovery in Dower was pleaded, and the eſtate of the Plaintiff mean, and the iſſue was upon *non compriſe*, proces was awarded to Summoners and Viewers &c. and the Aſsiſe called, it ſeems to the intent that if they came not, they ſhould be amerced, and if they came, there is nothing to do at this time. So upon a Demurrer, if the Juſtices adjourn the Aſsiſe, the Jurors ſhall be called from day to day, and yet it may not be taken &c. *P.* 48 *Ed.* 3. *fol.* 11. *Aſſ.* 65.

In an aſsiſe, at the firſt day the Defendant made default, the aſsiſe was awarded, and the Plaintiff called to make his plaint, and the Jurors made default, yet they were not amerced, but a *Habeas Corpora* awarded, 30 *Aſſ. P.* 17 *Aſſ.* 302. and it ſeemeth the Law in all inqueſts which are to appeare at the next day after any iſſue, if the tenant be eſſoind or make default, the Jurors ſhall not be amerced for not comming. *Hen.* 6 *fol.* 20. 1 *H.7. fol.* 8. and ſo although the Tenant come at the firſt day, becauſe he might have been eſſoyned, 1 *Ed.* 3. *fol.* 12. So to a *ſicut alias* after reſummons, where the firſt *Venire facias* was not ſerved, and after the plea was without day by demiſe of the King, & at the reſummons, and a *Habeas Corpora* if the party be eſſoined, the Jury ſhall not be amerced. Otherwiſe it is if the parties appear &c. *H.6. fol.* 20. *Quære*, if they ſhall be amerced where the defendant in treſpaſs comes not at the firſt day after iſſue, becauſe it is not another proceſs.

XXXVIII.

XXXVIII. *The Form to enter the Pleas and continuances in all other matters.*

ERror upon aſsiſe where at the firſt day of the aſsiſe, and the parties appeared, and being ſworn, the aſsiſe remained for want of Jurors, and at another day the parties appeared, and the Jury were ready, and becauſe no mention was in the Record that the two were ſworn the firſt day, but in the backſide of the panel, nor no mention of the firſt day, nor of the *Habeas Corpora*, it was held error, for if theſe matters, and that which was done the firſt day be not entred, they may plead anew, where peradventure they had confeſſed before &c, 38 *H.6. fol.*14. *Error* 39

Error upon an aſsiſe where the parties and Jury appeared, the entry was, *Juratores exacti vener. & aſſiſa rem. capiend. eo quod quidam non fecer. viſum, et quidam non apperuer.* and it was held error. *Huſſey*, if the Record were, *Quod jurat. compar. quor.* 12. *ſuper ſacrum ſuum dicunt &c.* and not entred, *Electi & Jurati*, this is Error, although it is implied, *M.* 1. *R.* 3. *Error* 48. and the entry, *Quod quidam fecerunt viſum, & quidam non*, is Error, but it ſhould be, *Quod aſſiſa remanet pro defectu viſus*, 3 *H.7. fol.*13. *Error* 49.

That which is done the firſt day remains upon Record before the Juſtices newly aſſociated, and if recovery be pleaded, and be entred that he had his recovery at the next Seſſion, this ſhall be underſtood to be the Plea of the partie, and not the ſaying of the Juſtices, for they ſhall not ſay to the party who had his recovery at the day, 14 *Ed.*3. *Aſſ.*110.

Aſsiſe in the Bench remaining for want of Jurors, the entry ſhall be accordingly, and by the panel the eſtreats ſhall be made, for the panel ſtayes alwayes in the Bench, but in an aſsiſe in the Countrey it ſhall be entred that it remains, *Pro defectu talis & talis non jurator.* as before, and the eſtreats ſhall be made by the Roll, and the panel ſhall be delivered to the Sheriff, 12 *Aſſ. P.*19. *Aſſ* 198.

XXXIX. *Where the Tenant ſhall ſay that the Aſſiſe came upon the Title, and certain matter of Title to a Rent, or againſt a Deed pleaded, or by reverſion, and whether he meddles with the Bar.*

Colt brought an aſsiſe, the Tenant ſaid, that his Father died ſeiſed, and gave colour, the Plantiff, that after the diſcent *T.* was ſeiſed, and gave it to our Father in taile, who died ſeiſed, and we &c. untill &c. the tenant ſaid, let the aſsiſe come upon the title &c. and well, by the better opinion,

as in all Caſes where the plaintiff makes Title at large, or where he doth confeſſe and avoid the Barre, *ut hic*, if not where he conveyes from the Tenant himſelf, as it is ſaid, that he enfeoffed him by whom the Tenant claimes upon condition and entred upon the breach, for there the Tenant ought to maintain his Bar, and ſhall not ſay, the Aſſiſe came *&c* and in all Caſes where the Bar is in traverſe, the Tenant ought to maintain it, for the Iſſue tendred hath made the Bar materiall, *Tr.* 5. *H.*7. *fol.* 29. *Aſſiſe* 35. and ſo *Fitzh.* reports, but in the Book at large, *Fineux* and *Fiſher* hold, that the Bar ſhall be likewiſe maintained when it is confeſſed, and avoided, and *Fineux* ſaith, where the recovery is pleaded in Bar, or other matter, upon which the plaintiff cannot make his Title at large, the Tenant may not ſay, the Aſſiſe came *&c.* and ſo it ſeemeth to him when a diſcent is pleaded, 5 *H.*7. *fol.* 30.

See a good Caſe of this 32 *Ed.* 3. *Aſſiſe* 99. *Diviſ.* 1. *J. K.*

If a plea in Bar of the aſſiſe be naught, the plaintiff needs not make Title, nor anſwer to the Bar, but demur upon it. 20 H.6. *Tr.* 11 H. 7. *fol.* 28.

And where the Tenant pleads a Bar, and gives colour by Title after the Bar, the Plaintiff may well traverſe the Bar without making Title, as where the Tenant claims by diſcent as eldeſt, and the plaintiff is youngeſt *&c.* it is ſufficient to ſay, that the Tenant is a Baſtard. So if the Tenant ſay, that he was ſeiſed untill diſſeiſed by *T.* who enfeoffed the Plaintiff, it is ſufficient to ſay, that *T.* did not diſſeiſe the Tenant, or that he enfeoffed not the plaintiff, but if the Tenant plead a feoffment of a ſtranger, and that the plaintiff claims by Deed *&c.* now it is no plea to ſay that the ſtranger enfeoffed not the Tenant, but he ought to make Title, for the Tenant hath not given him Title in deed by the colour, 20 H.6. *fol.* 38. 39. 5 H.7. *fol.* 32. *& vide de hoc* 3 *Ed* 4. *fol.* 20. 4 *Ed.* 4. *fol.* 17.

It was ſaid, that in Treſpaſſe upon a Feoffment of the Plaintiff pleaded in Barre, he may ſay, that he was not enfeoffed *&c.* but in an Aſſiſe he ought to make title, *Quare* 10 *Ed.* 4. *fol.* 9.

Entry in nature of aſſiſe of Common, the Tenant ſaith, that he diſſeiſed not, and here the title is not compriſed within the Writ, but he ought to make title to the rent or common, but this Writ lieth not of a Common, 4 *Ed.* 4. *fol.* 2 *Entry* 34. 5 *Ed.* 3. *fol.* 15 *Aſſiſe* 167.

An Aſſiſe of Corodie without ſhewing thereof, and *Finchd. fuit iratus*, becauſe the Court would not compell the Plaintiff to make title where it was in groſſe, and ſaid they did againſt the Law, 29 *Aſſ. P.* 8. *Aſſiſe* 278.

XL. *What Title is good in an aſſiſe or other action againſt the Deed of the Anceſtor, or a Record.*

UPon a Deed of the Anceſtor with warranty to *T.* whoſe eſtate the Tenant hath pleaded in Barre, the Plaintiff ſaith, that the Anceſtor died

died ſeiſed, *Herle*, the Title ſeemed good, but it was found againſt the plaintiff, the deed is confeſſed, yet he took it by proteſtation, 9 *Ed.*3. *f.* 17. *Aſſiſe* 155. *M.*38 *Ed.*3. *Title* 30. *and* 44 *Ed.*3. *Title* 31. *M.* 45 *Ed.*3. *Title* 32. 10 *H.*4. *Title* 14. 16 *Aſſ.P.*16. *Title* 9.

It was ſaid, 10 *Aſſ. P.* 23. that againſt a releaſe of the anceſtor with warranty, a dying ſeiſed of the ſame anceſtor ſhall not be a Title, but it ſhall be againſt his Feoffment with warranty *Title* 8.

Againſt a releaſe of the anceſtor with warranty by collaterall pleading, the plaintiff ſaid, that after the date of the releaſe, one T. was ſeiſed in fee, and enfeoffed him, it was held a good Title, *M.* 28 *Hen.* 6. *Title* 19. the Tenant would have eſtopped him by this, that in another aſſiſe upon the ſame plea in Bar, the plaintiff made Title by Leaſe and releaſe, but becauſe the releaſe was denied, each was eſtopped againſt the other &c. all at large, *Hill* 32 *Ed.*3. *Title* 36.

In an Aſſiſe, a Fine of the anceſtor pleaded in Bar, the Plaintiff ſaid, that this anceſtor had nothing but for life, the reverſion to him, and that he entred for forfeiture, and it ſeemed a good Title, ſhewing how he hath the reverſion. *Caunt.* If he claim it one way, and another Title be proved, he ſhall recover. *Herle*, If in an Aſſiſe one juſtifie for alienation of the Tenant for life, he ſhall not ſhew how he hath the reverſion, becauſe it is veſted, H.6. *Ed.*3. *fol.*1. *Aſſ.* 198. But againſt ſuch Fine of his anceſtor, he ſhall ſhew the Leaſe of the other anceſtor to him which acknowledged the Fine and the diſcent to the Plaintiff, who entred &c. 3 *Ed.*3. *fol.* 21. *Aſſiſe* 174. and needs not ſhew how the other anceſtor had it &c.

Upon a Fine of the anceſtor pleaded againſt an Infant, he ſaid, that the Conuſee re-infeoffed the ſame anceſtor who died ſeiſed, and becauſe within age, the Aſſiſe was at large, but yet the Title ſhall be entred, 28 *Aſſ.*401. *Aſſiſe* 26.3. but to ſay generally that the anceſtor died ſeiſed, is no Title againſt a Fine, without ſhewing how he had it, 5 H.7. *fol.* 29. *Aſſ.* 35. So of an Act of Parliament, 10 H.7. *f.*5. H.10 H.4. *Title* 14.

In an aſſiſe the Tenant pleaded recovery againſt a ſtranger, and Title of the plaintiff mean between the Writ and the Recovery; it is no plea for the plaintiff to ſay, that he againſt whom *&c.* had not any thing, if he ſay not that himſelf was ſeiſed, or another whoſe eſtate he hath, *P.*48. *Ed.*3. *fol.* *Title* 33.

The Tenant ſaith, that he recoverd againſt the ſame Plaintiff in an aſſiſe, he ſaith, that *T.* gave the Lands to *B.* his father for life, the remainder to the plaintiff, the father died, he entred, and was ſeiſed and diſſeiſed long time before the recovery, and held a good Title, *P.*13 *Ed.*3. *Title* 6.

And in this Caſe to another parcell, the Defendant pleaded a recovery againſt a ſtranger of the Seiſin of *A.* in a *Mortdanceſtor* and the Title of the Plaintiff mean, and ſaid, that *T.* gave it to *A.* for life, the remainder to him &c. ſo being ſeiſed before the *Mortdanceſtor*, the Tenant ſaid that *A.* was ſeiſed in fee, without that that he had any thing of the gift

of *T.* but it is not ſufficient to ſay only, that *A.* had nothing of the gift of *T.* for where the Plaintiff is compelled to make title, it is ſufficient to traverſe it.

But where one makes title of his own agreement only, there, upon another title found, he ſhall recover, and here the title is not materiall, for he might make title, that before the Recovery he was ſeiſed, and diſſeiſed, without more, and ſo the Leaſe to *A.* not traverſable, *P.* 13. *Ed.* 3. *Title* 6.

Fine pleaded and executed againſt *T.* and title of the Plaintiff mean, the Plaintiff makes title after by fine of the Conuſee &c. 29 *Aſſ. P.* 1. *Aſſiſe* 275.

XLI. *What Title may be good, where he medleth with the Bar, and whether he medleth with the bar, or make Title at large.*

IT is not a ſufficient title, that it was found by office, the reverſion to him after the death of the Tenant for life, without ſhewing how he had it in deed, where the Tenant ſaith, that the reverſion was granted to him by *T.* who leaſed it to *J.* (now dead) for life, *H.* 10 *Ed.* 3. *fol.* 2. *Aſſ.* 156.

Aſſiſe by a Woman, the Tenant ſaith, that the Land was given to the Plaintiff and her firſt husband in ſpecial taile, the remainder to the Heirs of the Husband, who died without iſſue, that ſhe took another Husband who aliened, and the Heir of the firſt entred, and enfeoffed us, the woman ſaid, that her firſt Husband deviſed the remainder to her and her Heirs, now the Tenant took not advantage of the diſcontinuance but demurred upon the deviſe, and this was held a good Title &c. 26 *Aſſ. P.* 60. *Aſſ.* 259.

A man ſhall make title at large in no Action, but in an Aſſiſe, not in Treſpaſs, becauſe of the certainty in the Writ, *ſcil.* day and year &c. and judgement hath been reverſed upon a title at large, made in a Writ of Entry in nature of an Aſſiſe, 5 *H.* 7. *Title* 24. and *M.* 21 *H.* 6. *Title* 26. *the ſame year*, *Title* 27. But there he may ſay, that after the title pleaded in bar, ſuch a one enfeoffed him, 34 *H* 6. *fol.* *Entry* 25.

An Aſſiſe by *Colt*, the Tenant ſaid that *T.* enfeoffed the Father of the Plaintiff, and the Land deſcended to the Plaintiff, and afterwards it was ordained by Parliament, that all eſtates made by *T.* or by any other ſeiſed to his uſe to the Father of the Plaintiff, or to any other to his uſe, ſhould be void, whereupon *T.* entred upon the Plaintiff, and enfeoffed us. The Plaintiff ſaid that *J.* was ſeiſed, and gave it to the Father and Mother of the Plaintiff in taile, that the Wife ſurvived, and we are their iſſue &c. and it was held that title at large ſhall not be made, becauſe the Tenant hath

given

given him a title and avoided it by Parliament. So where one gives title by matter in a fact, as that he enfeoffed the Plaintiff upon condition &c. or that his Father within age enfeoffed the Plaintiff &c. ſo if not of ſound memory &c. or where the Father of the Plaintiff diſſeiſed the Tenant, and he made continual claim &c. in theſe caſes *Brian* ſaid, that the Plaintiff ſhall not make title at large. It was alſo held, if the Tenant plead a fine, recovery, or Feoffment with warranty, the Plaintiff ſhall not make title at large, for he is bound by them, if he be party, or Heir. *Quære* of the Warranty. But if the Tenant plead that the Plaintiff recovered againſt him, and he reverſed it by Writ of Error, and ſtayed Execution, the Plaintiff may make title at large, for this recovery is but a colour &c. *Quære*, if this ſtand with the reaſon of *Brian*, 5 *H.* 7. *fol. Title* 25.

And where a man makes title at large, he ſhall not traverſe the bar, 5 *H.* 7. *fol.* 32. and *fol.* 33.

The Tenant ſaith, that *J.* enfeoffed him, and afterwards diſſeiſed him, and enfeoffed the Plaintiff, the Plaintiff ſaid that *J.* levied a fine to the Plaintiff before, and that he enfeoffed not the Tenant, this is a negative pregnant, but he ſhall ſay, that before the feoffment ſuppoſed, he acknowledged a fine to the Plaintiff, without that, that he hath any thing of his Feoffment &c. *M.* 21. *H.* 6. *Title* 27.

It was ſaid, if a Feoffment of a ſtranger be pleaded, and colour given, the Plaintiff ſhall not ſay that before &c. another was ſeiſed, and enfeoffed him &c. until &c. becauſe it might ſtand but it is ſufficient to ſay that a ſtranger was ſeiſed and infeoffed him, without ſaying *before* &c. *Quære*, it ſeems this is a title at large, 14 *H.* 6. *fol.* 6. *Vide* 28 *H.* 6. *Title* 19 *Diviſ.* 39.

And upon releaſe of the Plaintiff pleaded, it is ſufficient to ſay, that afterwards *T.* was ſeiſed and enfeoffed him, 9 *H.* 6. *fol.* 49.

XLII. *Title, where to be ſhewen how he had the Eſtate, or how he by whom he claims had it, and where good by what Eſtate.*

A Feoffment of a ſtranger pleaded in bar with colour, the Plaintiff ſaith that he was ſeiſed untill he was diſſeiſed by the Tenant, without that the ſtranger enfeoffed him, and held a good Title, *quod nota*, *P.* 30. *H.* 6. *Title* 15.

The Tenant pleaded that *W. P.* leaſed to the Father of the Plaintiff, the remainder to his Father in fee, and both are dead, and gives colour, the Plaintiff ſaith that *W.* before the ſuppoſed Leaſe was ſeiſed and enfeoffed him, and was ſo he was ſeiſed until &c. held a good title, 9 *H.* 4. *Title* 95.

Aſſiſe

Aſſiſe of Rent in groſs, the Plaintiff may not make title by a *Que* eſtate by preſcription, otherwiſe it is, if he claim as parcell of a Mannor, 31 *Aſſ.P.*23.*Title* 13.

So of Rent-ſervice, ſeiſin is a ſufficient title without Deed after the purchaſe. Otherwiſe it is of a Rent-ſeck or Rent-charge, although that he and all the Lords of the Mannor have been ſeiſed &c. if he claim it not as parcel of the Mannor, 22 *Aſſ. pla.* 52. *Aſſ.* 244. Upon a Recovery pleaded, the Plaintiff may well ſay, that he againſt whom &c. had not any thing, but *T.* whoſe Eſtate he hath, and good without ſhewing how, 48 *Ed.*4. *fol.* *Title* 33.

It is ſaid that the Plaintiff by way of title in his replication ſhall never plead by a *Que* Eſtate, 2 *Ed.* 4. *fol.* 27. *per Danby* 9 *Ed.* 4. *fol.* 3.

XLIII. *The forme of Title to a Rent, Common, Office, and Corody.*

VPon *Hors de ſon fee* pleaded, the Plaintiff may well ſay that his Grandfather died ſeiſed, and the Land deſcended to his Father, who died ſeiſed, and it deſcended unto him, and ſhall have the aſsiſe without ſhewing any ſpecialty, 8 *Ed.*2. *Aſſ.*420. *Vide Diviſ.* 41. a good caſe. An Abbot ſhall make title to Rent by preſcription, 19 *Ed.*3.*Title* 34. 18 *Aſſ. P.*17. *Title* 10. And title by a *Que* Eſtate by Deed is good &c. *& vide* 29 *Aſſ.P.*66. *Title* 12. where in an aſsiſe of Rent upon the Deed of the Anceſtor pleaded, the Plantiff ſaid, that his Anceſtor died ſeiſed, without ſhewing how, and it was good as well as of Land &c.

A man made title to Rent by Deed, by which the Grantor bound himſelfe to pay it &c. 29 *Ed.*3. *Aſſ.*366.

The Tenant ſaid, that he granted the Rent to the Plaintiff for the term of the life of *T.* who is dead, the Plaintiff ſaid that the Tenant held the Land of him, and he was ſeiſed untill diſſeiſed, and it was good without alledging any ſpeciall diſſeiſin, 36 *H.* 6. *fol.* *Title* 22. *Vide the accord with* 9 *Ed.*4. *fol.*19. *Aſſ.*30.

The Plaintiff made his title, that *T.* was ſeiſed of the Land whereof &c. and granted him the Rent, and did not ſhew the quantity of the Land, but the Deed would have it, *de omnibus terris in villa*, and it was part of his plea, whereby the title was good, H 8. *H.* 4. *fol.* *Title* 28. 7 *H.*4. *fol.* 29.

An Aſſiſe of Rent, the Tenant ſaith, that the Plaintiff enfeoffed him, to hold of the chiefe Lord, the Plaintiff ſaith, that after &c. he was ſeiſed by the hand of the Tenant, this is no title without ſaying how &c. 8 *Ed.*3. *Aſſ.*4[illegible]0. See there, he alledged how he was diſſeiſed of the Rent, as by replevin, ſued, and agreeth with 11. *H.*7. *fol.*28. where it is ſaid, that he ought in the title to ſhew what rent it is, and how the diſſeiſee made it &c.

In

In an aſſiſe of an Office, and made title by reſignation of *T.* and that he was admitted by the Chief Juſtice, and it was held, a Reſignation is of a Benefice to the Biſhop, but of an Office it ſhall ſurrender; but the better title is to ſay, that the Office was void, and he was admitted, *M.* 8. *Ed.* 3. *fol.* *Title* 23.

An Aſſiſe of Corody, where he ſhall not make title by the Grant of the King without Deed, 4 *Ed.* 3. *Aſſ.* 177. *Vide the Caſe Diviſ.* 16.

XLIV. *What Title ſhall be when the parties agree of one and the ſame perſon, and what when the Tenant gives colour of Title to the Plaintiff.*

IN an aſſiſe the Tenant pleaded the Feoffment of a Stranger, and gives colour, the Plaintiff to part ſaith, that another ſtranger enfeoffed him, and to the reſidue ſaith, that one *T.* acknowledged a fine of releaſe to the Plaintiff &c. and the laſt was held no title, becauſe he alledged not ſeiſin in *T.* as if the Plaintiff ſaid that one brought a *Præcipe* againſt him, and he barred him, this is no title. So he ſaid, that he himſelfe was ſeiſed, and that a ſtranger releaſed unto him &c. But a fine of his gift is a good title, 13 *H.*6. *Title* 21. *M.* 10 *H.*6. *fol.* 21.

The Tenant pleaded, that *W.* leaſed to the Father of the Plaintiff for life, the remainder to his Father in fee, and both died, and gave colour, the Plaintiff ſaid, that *W.* before this Leaſe ſuppoſed, was ſeiſed, and enfeoffed him, ſo he was ſeiſed until &c. and held a good title without more, 9 *H* 4 *Title* 29. *Diviſ.* 41.

But where the Tenant ſaid that *T.* enfeoffed him, and afterwards diſſeiſed him, and enfeoffed the Plaintiff, and the Plaintiff pleaded the gift of *T.* to him before &c. without that that the Tenant hath any thing of the feoffment of *T.* *Quære*, if this traverſe be needfull &c. *M.* 21 *H.* 6. *Title* 27.

In an aſſiſe the Tenant ſaith that *J.* died ſeiſed, and his heir infeoffed him, the Plaintiff ſaith that *J.* was his Villain, and he entred before the feoffment &c. *M.* 26 *H.*6. *Title* 17.

The Tenant ſaid that his Anceſtor was ſeiſed, and did Leaſe to *T.* for life, who aliened, and the Plaintiff claimed as Heir, where he was a baſtard entred, and we outed him as Heir &c. the Plaintiff ſaid, that he recovered in an aſſiſe againſt *T.* and his alienee, at which time the Tenant had nothing, nor ever had, and ſo was ſeiſed &c. and held no title to have an aſſiſe 10 *Aſſ. P.* 20. *Title* 7.

XLV. *Where*

XLV. *Where in Aſſiſe where there is no need to make Title, beſides his own poſſeſſion, and where it is needfull.*

VPon a Feoffment of a ſtranger pleaded in Barre, the plaintif ſaid that he was ſeiſed, untill he was by the Tenant diſſeiſed; without that the ſtranger enfeoffed him. *Paſton* held this a good Title, 30 *H.* 6. Title is. But 26 *H.*6 *Title* 18. to alledge his own Title with traverſe to the Barre was held no ſufficient Title in an Aſſiſe, nor in a Writ of Entry, but good in Treſpaſſe &c.

But ſee that upon a recovery againſt a ſtranger pleaded and the Title of the plaintiff ſhewed, it ſufficeth to alledge the Seiſin in himſelf at the time without that that the ſtranger had any thing, 48 *Ed.* 3. *Title* 33. and upon releaſe of all Actions pleaded, the Plaintiff ſaid, that after it he was ſeiſed and diſſeiſed, and held a good Title, becauſe this Releaſe did not extinguiſh the right, *P.* 19 *Ed.* 3. *Title* 35. and upon a recovery pleaded againſt a ſtranger in a *mort. d'anceſtor*, and the Title of the plaintiff ſhewed it was holden a good Title, to ſay that before &c. he himſelf was ſeiſed untill &c. 13 *Ed.* 3 *Title* 6. See of this *Diviſ.* 39.

In an Aſſiſe the Tenant ſaid, that the Plaintiff brought *Termin. qui præteriit* againſt him of the ſame Land, Judgement &c. the Plaintiff ſaid, that this Land is not part of the Land then put in view, whereupon Aſſiſe was awarded, but if the Tenant had rejoyned, that part was in view, proceſſe ſhould have been made againſt the firſt viewers, otherwiſe if he had ſaid, parcell in demand, and it was moved, whether it was a Title for the Plaintiff, to ſay that after &c. that he was ſeiſed, untill he was diſſeiſed, and if he ſhewed that he was ſeiſed before the Writ and diſſeiſed, and that after the Writ he entred &c. upon this Title he ſhall have an aſſiſe, although that the other Writ be depending, *Quære* of this 29 *Aſſiſe. P.* 66. *Title* 11.

Upon a Deed of the anceſtor pleaded againſt two, whereof the one was within age, both made Title by diſcent from the ſame anceſtor, and it was well, but if another Title be found for the Infant, they ſhall recover, 29 *Aſſ. P.* 53. *Aſſiſe* 289.

Where a releaſe of a ſtranger in his poſſeſſion, is no Title, 16 *Hen. fol.* 22. *Diviſ.* 43. *A.*

XLVI. *Where*

XLVI. *Where upon a naughty Bar pleaded, and a good Title, a naughty replication ſhall not prejudice, if the Title and diſſeiſin proved.*

THe one Tenant pleads a Bar, the other that no Tenant is named, the Plaintif makes Title which is good, now although the Bar be naught, and the explication to the Title naught, and the Seiſin and diſſeiſin found, the plaintif ſhall recover, 36 *H.6.fol.* 35. *Aſſ.*19.

If the Tenant plead a naughty Bar, and confeſſe the ouſtre, the Plaintif makes a good Title, and this being found, he ſhall recover without inquiry of the Seiſin and diſſeiſin, ſo when a good Bar is pleaded, and the Tenant ſaith, that the Aſſiſe cometh upon the Title, and found for the plaintif &c. for where a naughty Bar is pleaded the plaintif may make Title at large, and pray the aſſiſe 6 *H.*7.*fol.*2. *Aſſiſe* 36. 14 H.7.*fol.* 12. and otherwiſe it is in *Præcipe.*

Likewiſe upon a naughty Bar pleaded, the plaintif may have the Aſſiſe at large without making Title, but if he make Title, which likewiſe is not ſufficient, and Seiſin and diſſeiſin be found, he ſhall not have Judgement, *Quære*, for ſome ſay that he ſhall have it upon the ſeiſin and diſſeiſin found, but not upon a naughty Title found for him, *T.*11.H.7.*fol.*28.

XLVII. *Where one may plead a Bar without the other, and where he may plead for himſelf and another, and where the one may not plead in Bar, and the other to the Writ, and a Bar againſt the one plaintiff, and to the Aſſiſe againſt the other.*

ASſiſe againſt husband and wife, who plead a Bar by Attorney, at another time the husband in proper perſon pleads a releaſe, and it ſeems he ſhall not be received, if the Attorney of the wife will not aſſent &c. 26 *Book of Aſſiſe P.* 44. *Aſſiſe* 243.

Aſſiſe againſt Husband and wife, he ſaith that the wife is eloined and within age, and pleads for himſelf and his wife as guardian. *Thorp* ſaid, that he ought to have a warrant, *&c.* and the aſſiſe awarded, 29 *Aſſ. P.*67. *Aſſiſe* 293.

Aſſiſe by husband and wife, ſhe may not diſavow the ſuit, and if ſhe be eloined by the Tenant, or if the wife of the tenant be eloined by the plaintif he ſhall ſhew it, and plead for him like, and his wife, but he ſhall be like that of her husband, 39 *Aſſ.P.*1. *Aſſiſe* 333.

Upon profeſsion pleaded in the Wife, and certified, the Judgement ſhall not be, that they ſhall be barred for ever, *P.*21 *R.*2. *Aſſ.*334

Aſsiſe againſt two, the one ſaith, that the Plaintiff was ſeiſed, and was ouſted of the Plea, becauſe the other as tenant had pleaded to the aſsiſe, 26 *Aſſ. P.* 49. *Aſſ.* 244.

Aſsiſe by two Parceners, the one within age, the Tenant claimed by partition as the 3. and pleaded the partition in bar againſt her of full age, and to the aſsiſe againſt the Infant, and it was holden that he muſt plead in bar againſt them both, or ſhe may wave the bar againſt the other *per Curiam*, yet the aſsiſe ſhall be inquired at large for the Infant, 30 *Aſſ. P.* 7.

Aſſiſe againſt two ſeverall tenants, the one pleads a Deed of the Anceſtor of the Infant, which comprehendeth all the Land, but he would not that the other tenant ſhould take advantage of the Deed, and the other pleads the ſame Deed to *T.* whoſe Eſtate he hath, and well without ſhewing it, becauſe it belonged to the other tenant party, 40 *Aſſ. P.* 34. *Aſſ.* 342.

XLVIII. *Of what things the aſſiſe ſhall firſt inquire, and where of many points.*

ASſiſe againſt *J.* and others, the others to part plead joyntenancy, and to the reſt as Tenants plead in bar. *J.* likewiſe accepts the tenancy, and pleads in bar by a Deed of the Anceſtor of the Plaintiff, the Plaintiff chooſeth *J.* his tenant, and intitles him by entry for condition, and at iſſue, and found that the others were Tenants of that part whereof joyntenancy was pleaded, and of the reſidue, the condition found againſt the Plaintiff, and was held error, becauſe the iſſue was inquired before the tenant. So when one pleads no tenant named, and if &c. *nul. tort.* it ſhall be error to inquire of the ſeiſin and diſſeiſin before the tenant be found, *P.* 11. *H.* 4. *f.* 68. *Aſſiſe* 48. 35 *Aſſ. P.* 2. 12 *H.* 6. *f.* 1.

And in an aſsiſe adjourned for the difficulty of the Verdict, becauſe they inquired of the iſſue before the Tenant was found, where the tenancy was ſeverally taken upon them, the aſsiſe was remainded to inquire therof, and ſeiſin and diſſeiſin, 35 *Aſſ. P.* 2. *Aſſ.* 319.

Vide 13 *Ed.* 3. *Aſſ.* 60. where one Defendant made title by the dying ſeiſed of the Anceſtor, and the other ſaid, that ſhe was tenant in Dower of the endowment of the ſame Anceſtor, and of the aſſignment of the other tenant; now the aſsiſe ſhall firſt enquire of the ſeiſin and diſſeiſin, and laſtly of the plea of the tenant in Dower *&c.* So where the one as tenant pleads that the Land is in another town, and the other claims as tenant in Dower *&c.* the plea of the wife ſhall not be inquired, untill the diſſeiſin be alſo found for the Plaintiff, 22 *Aſſ. P.* 2. *Aſſ.* 199.

Aſſiſe of Rent againſt two, the one pleads, that he was never ſeiſed, the other *hors de ſon fee*, the Plaintiff ſhewed the Deed of him who pleaded

hors de ſon fee, the Deed ſhall be firſt inquired *&c.* 18 *Aſſ. P.* 17. *Aſſiſe* 213. and it is ſaid, that alwayes juſtification by title ſhall be inquired before the plea, which doth but excuſe him of the wrong *&c. M.* 31 *Ed.* 3. *Recap. c.* 5.

XLIX. *Where the Aſſiſe ſhall be remanded after adjournment, and when and how it ſhall be remanded.*

A Sſiſe may be remanded upon adjournment, where it was not fully inquired of before, *Diviſ.* 47. *B.*

Aſſiſe adjourned upon forraign releaſe pleaded and denied, and upon default of the tenant at the *Venire facias* returned by the Sheriff, the aſſiſe was remanded, 39 *Ed.* 3. *fol.* 10. *Aſſ.* 51. *P.* 11 *Ri.* 2. *Aſſiſe* 72.

So where it is adjourned to adjudge if the Leſſor have fee upon the matter ſhewed, and it being adjudged that he had not the fee, he ſhall not have generall averment afterwards that he hath the fee, but the Aſſiſe ſhall be remanded, 44 *Ed.* 3. *fol.* 10. *Aſſiſe* 56.

Fineux ſaith, in an aſſiſe adjourned for difficulty the Juſtices may hold plea untill the taking of the aſſiſe, and may award it upon ſeiſin and diſſeiſin, and then remand it in the Countrey to try the iſſue taken in the Bench, but upon adjournment for difficulty, they may not give judgement upon the Verdict which was difficult, without remanding, becauſe the trial is paſt before *&c.* *Tr.* 16 *H.* 7. *fol.* 12.

Aſſiſe in *Co.* a fine of the Anceſtor, the Plaintiff was ſhewed of the ſame Tenements in *Cla.* Judgement of the Writ, and adjourned, and the Writ adjudged good. *Shard*, when the Aſſiſe is ſent thither for the difficulty of the plea, and if this adjudged no bar, the aſſiſe ſhall be awarded and remanded to be taken. *Caunt.* But when the plea is to the Writ, and there is no Plaintiff, we will do nothing but adjudge the Writ good, and then he is at large to plead here in bar if he will, or to the aſſiſe, 6 *Ed.* 3. *fol.* 1. *Aſſiſe* 168.

L. *What Bar ſhall be good in Aſſiſe of Land.*

TO ſay that he entred for the alienation of his tenant for life, and the eſtate of the Plaintiff mean between the alienation and the entry, is no bar, becauſe yet the Tenant may be in by diſcent, and all true. But that he entred for condition broken, and the Eſtate of the Plaintiff mean, it is good, where he ſhall recover againſt a ſtranger &c. But a fine levied, and the Eſtate of the Plaintiff mean between the entry, and the execution is no bar, *Conceſſ.* 21 H. 6. *fol.* 17. *agreeth of a fine recovered*, 8 *Aſſ. P.* 1.

and it held a good bar, *per Curiam*, 29 *Aſſ. P.* 1. *Aſſ.* 175. *Vide* 33 *Aſſ. P.* 24 and 43 *Aſſ. P.* 45. the diverſity between the entry upon forfeiture, and for condition broken.

If one Defendant take upon him the tenancy, and plead in bar, he may not ſay, that the others have nothing, unleſs that ſome other take upon him the tenancy alſo, 8 *H.* 4. *fol.* 7. *Aſſ.* 43.

In aſsiſe, the tenant ſaid that his Father died ſeiſed, and that he as ſon &c. and the Plaintiff claimed &c. entred, upon whom *J. S.* entred, upon whom he re-entred. *Skene*, this amounts but that he diſſeiſed him not. *Hulls*, he hath ſaid enough. *Tirwhit*, it is nothing, *qd. nota*, 9 *H.* 4. *fol.* 4 *Aſſ.* 44.

But if the Tenant ſaith that *J.* died ſeiſed, and *N.* his Heir in ward to *T.* who granted unto him, and that *N.* yet within age abated upon him, upon whom the Plaintiff entred, and he re-entred, this is a good bar, *P.* 21 *Aſſ. P.* 27. *Aſſ.* 221. *Vide*, 5 *H.* 7. *fol.* 11. *infra G.*

Aſsiſe the Tenant pleaded the Feoffment of the Plaintiff with warranty to one named in the Writ, whoſe Eſtate he had; this is a good bar, *P.* 43. *Ed.* 3. *Aſſ.* 54. but no bar if it be without warranty, 29 *Aſſ. P.* 24. 10 *H.* 7. *fol.* 14. 11 *H.* 7. *fol.* 21.

In an aſsiſe the Tenant ſaid that *T.* leaſed to the Anceſtor of the Plaintiff, who ſurrenderd unto him, whoſe Eſtate the Tenant hath. This is ſaid by him is but to the aſsiſe, but ſaid by *T.* is had been a bar, 11 *Aſſ. P.* 1. *Bar* 59. 19 *H.* 6. *fol.* 21.

Jointenants by feoffment at the time of the Writ, no plea, *P.* 18 *Ed.* 3. *Aſſ.* 77. And ſee there that execution againſt tenant in taile upon a Statute acknowledged by his Father is a diſſeiſin.

An Aſsiſe by a Woman againſt a Woman, ſhe ſaid, that *W.* did grant, and render the Land to her and *P.* her Husband in taile &c. the Aſsiſe taken ſaid, that the Plaintiff and *H.* her Husband were jointly ſeiſed in Fee, and leaſed in *W.* and his Heirs for 16. years (ſaving the reverſion of three parts) and that after the term the fourth part ſhould remain to *J. W.* and their heirs, *J. W.* died without Iſſue, *J.* his Heir entred, and died without iſſue within the term, whereby *P.* his Brother and Heir entred, and this *W.* acknowledged a fine to her Husband, the tenant and her, whereas *W.* never had title nor poſſeſſion, *P.* the Husband died, the Tenant held himſelfe in, and it was ſaid, that the taking of a fine, and ſo claim the fee is not now a diſſeiſin, becauſe the Tenant was covert at the time, and the Husband was dead, and the entry of the Heir upon the Leſſee for years to him and his heirs during the term is not lawfull, and it is to be accounted no diſſeiſin afterwards, until the tenant after the term ended deny the Heir entry &c. *M.* 11. *Ed.* 3. *Aſſ.* 88.

Where the recovery is againſt many, the Plaintiff recovers, and makes execution by *Elegit* for damages, and hath the land of *D.* delivered for the Land of *C.* *D.* ſhall have an aſsiſe, and the recovery ſhall not be a bar, for as to this, *D.* is not privy to the Judgment, *M.* 13 *Ed* 3. *Aſſ.* 97.

An

An exchange between the Anceſtor of the Plaintiff and the Tenant, it is a good plea in bar, *M.*7 *Ed.* 3. *fol.* 72. *Aſſiſe* 139.

A fine of the Anceſtor of the Plaintiff to the Tenant for life pleaded in bar, was ſaid to be no plea without warranty and relying upon it. *Quære*, But it ſeems a good plea, if he pleads over, and the Plaintiff ſuppoſing a forfeiture by alienation entred Judgement if upon ſuch abatement &c. and the Plaintiff averred that he was ſeiſed &c. and not by abatement, and upon that at iſſue, although the action is of his poſſeſſion, and the bar by the Deed of the Anceſtor, 8 *Ed.* 3. *fol.* 53. *Aſſ.* 148. But fine of the Anceſtor of *T.* who rendred to him for life, and the reverſion to the tenant, is a good bar by the conuſance, without the word of grant, 9 *Ed.* 3. *fol.* 5. *Aſſiſe* 152. 6 *Ed.* 3. *Aſſiſe* 168. 3 *Ed.* 3. *fol.* 21. *Aſſiſe* 174. and a fine *Sur Conuſans de droit*, or recovery againſt the Anceſtor is a good bar. So a fine upon releaſe, or upon a grant and render, 8 *H.* 4. *fol.* 7. *Averment* 18. And a Deed of the Anceſtor with warranty is good without queſtion, 13 *Ed.* 3. *Bar* 254. But this ſhall be pleaded in bar, and not as an Eſtoppel. But it was there holden, that the feoffment of the Anceſtor, of whoſe ſeiſin he demands, is but to the aſsiſe in a *Mortdanceſtor*, nor in waſte of his own Leaſe, otherwiſe it is againſt tenant in Dower, 20 *H.* 6. *fol.* 21. 28. 11 *H.* 4. *fol.* 3.

Feoffment with warranty being pleaded by way of replication in Treſpaſs, he relied upon the whole matter, 14 *H.* 4. *fol.* 13. and in a bar, 21 *Ed.* 4. *fol.* 99.

He which pleaded the feoffment of the Anceſtor to *T.* whoſe eſtate &c. ſaies further, that *T.* ſuffered the Anceſtor to occupy at will &c. and this is colour 11 *H.* 4. *fol.* 3. 19 *H.* 6. *fol.* 21. But there he pleaded the Leaſe of the Anceſtor to *T.* and relinquiſhed, *Que* eſtate &c. without ſuch colour.

Aſsiſe by a Warden of an Hoſpital againſt the Arch-Biſhop and *P.* the Arch Biſhop ſaid *nul. tort. P.* ſaid that the Arch-Biſhop for ſome cauſe hath deprived the Plaintiff, and made him Warden, and alledged not the cauſe, the Plaintiff alledged that the King made him Warden for life, and that it is a lay fee, and payeth tithes to the Parſon, & the Charter agreeth, and that the King had it by the temporalities of the Arch-Biſhop being void; ſo the Arch-Biſhop Patron, and although that he ſaid, that he deprived him as Ordinary, yet if he did it as Patron, the Plaintiff is barred. It is alſo a thing ſpirituall, and ſo under the Ordinary &c. *M.* 8. *Ed.* 3 *fol.* 69. *Aſſ.* 150. *Vide*, it was at the viſitation which he made as Patron being a lay fee &c.

Aſsiſe upon a Deed of the Grandfather with warranty pleaded, the tenant ſaid that the ſame Grandfather died ſeiſed, and good; but if this be found againſt him, it ſeems he may not deny the Deed afterwards. *Tremaile*, if it be found for the Plaintiff in another action, he may deny the Deed. *Harle*, by his Plea the Deed is not denied, and would have awarded the Aſsiſe, and the other traverſed the dying ſeiſed. And ſee, the

the Plaintiff was not put to anſwer to the deed of another Seiſin, but that is not denyed by the Plea of dying ſeiſed &c. 9 *Ed.* 3. *fol.* 17. *Aſſiſe* 155.

It was found, that the tenant of the King died alſo ſeiſed of other Land, which indeed he had not but for life, the whole ſeiſed, and after his eſtate found, the Reverſion to *I.* who now brought the aſsiſe, and *ouſter le main* granted, yet he muſt aver his title, and ſhew how it came *&c.* and then the Entry lawfull upon the *ouſter le main* granted in Chancery, and it ſhall give ſufficient Seiſin to have an aſsiſe, 10 *Ed.*3.*fol.*2.*Aſſ.*156.and no aid from the King in aſsiſe by alledging the Land was ſeiſed in his hands, without averring that it is now in his hands, 26 *Aſſ.P.*10. *Aſſ.*136.

It is a good plea in Bar, that the anceſtor of the Plaintif acknowledged in a releaſe by Fine to *T.* that he rendred it for life, the remainder to the tenant *&c.* 8 H.4.*fol.*7. 3 *Ed.*3.*fol.* 21.6 *Ed.*3.*fol.*1.

A Releaſe of the Plaintiff to *T.*whoſe eſtate he hath,is a good Bar,8 *Aſſ. P.*15. *Aſſ.*190. 43 *Ed.*3. *Aſſiſe* 54. and a releaſe to the Tenant a good Bar, 32 *H* 6.*fol.*1.

Tenant claims nothing but in Dower, 38 *Aſſ.P* 26.

The father held as guardian, and aliened in fee, 8 *Aſſ.P.*15.*Aſſ.*207. *Diviſ.*8.*B.*

A good Bar, that the plaintif aliened this parcel by the name of Manor, whereas it was ſevered before, 18 *Aſſ.P.*2.*Aſſ.*212.

Bar, that the plaintif had execution of a Statute againſt the tenant,and granted him at a certain time, and after did covenant that if he payed 20 l. that he ſhould retain it for ever, and that he paid him, and ſhewed an acquittance *in parte ſolutionis* of 20 l. and good with averment, that it was the ſame debt *&c.*20 *Aſſ.P.*7 *Aſſiſe* 216.

A recovery againſt the plaintiff that he had nothing of the time *&c.* is no Bar, 26 *Aſſ.P.*6.*Aſſ.*253. but it is not but to the Aſſiſe, if he alledged not this before *&c.* 28 *Aſſ.P.*14.

That the Plaintiff himſelf is ſeiſed, is to the Aſſiſe not in Bar, 27 *Aſſ. P.*30.*Aſſ.*253.

Bar by Entry for alienation of the Tenant after poſsibility, 27 *Aſſ.P.* 50. *Aſſ.*259.

Recovery againſt the Anceſtor a good Bar, notwithſtanding the dying ſeiſed of the ſame Anceſtor before Judgement, or depending the Writ (but then Error) 28 *Aſſ.P.*17.*Aſſ.*267.

In aſsiſe the Tenant ſaith, that *A.* recovered in aſsiſe againſt him, and that he reverſed it by Error, and the eſtate of the Plaintif mean between the recovery and the reverſall, it is not error if he ſhew not that *A.* was tenant at the time of the error ſued forth, for otherwiſe he may not enter upon the plaintiff without a *ſcire facias*, and the aſsiſe awarded for the damages, for not alledging it, 28 *Aſſ.P.*21.*Aſſ.*268.

Bar by Leaſe, by Indenture to the anceſtor of the plaintiff for life, and where he may ſay, that nothing paſſeth &c.28 *Aſſ.P.*22.*Aſſ.*269.

Bar

Bar in aſsiſe by this, that the plaintif diſſeiſed *B. D.* entred to the uſe of *E.* the ſon of *B.* who ſaith that he vouchſafed it, and it was good without deed, 29 *Aſſ. P.* 12. *Aſſiſe* 280 & 39 *Book of aſsiſe, P.* 11.

Bar by Partition made between the Plaintif and the Tenant &c. 30 *Aſſ. P.* 7. *Aſſ.* 298. *Diviſ.* 9. *G.*

But by partition with a ſtranger who had no colour to be heire, or with a diſſeiſor, although he had colour, or with a feme Covert, it is void, 11 *Ed.* 3. *Bar* 151.

Bar, that the father was ſeiſed, and the Lord granted unto him the wardſhip, 31 *Aſſ. P.* 26.

Bar, that the Plaintif hath execution of a Statute againſt us, and *T.* againſt him, whoſe eſtate &c. 38 *Aſſ. P.* 4.

In aſsiſe the tenant ſaith that her husband died ſeiſed, and the Plaintif aſsigned her dower holden in Bar and not to the aſsiſe, becauſe ſhe is in by the husband, but a Leaſe of the Plaintif ſhall be to the aſsiſe &c. 38. *Aſſ P.* 26. *Aſſ.* 332.

But *vide* 6 *H.* 7 *fol.* 14. *and* 18 *Ed.* 4 *fol.* 14. that a Leaſe of the plaintif is a good Bar, but by them a feoffment of the plaintif is not, but to the aſsiſe.

It is a good Bar, that *R.* the mother of the Plaintif was ſeiſed, and took to husband *T.* had iſſue, and *R.* died ſeiſed, *T.* in by the courteſie did Leaſe to the Tenant, and is yet alive, and good, becauſe he acknowledged the Reverſion to the Plaintiff &c. 27 *Aſſ. P.* 31. *Bar* 303.

It is not a Bar againſt an Infant to ſay that his Anceſtor acknowledged to hold of him in Knights ſervice by Indenture, &c. 39 *Aſſ. P.* 3. *Aſſiſe* 334.

In an aſſiſe, the Tenant pleaded that he brought his *Cui in vita* againſt the plaintiff, and after the Aſſiſe brought the Plaintiff vouched there, ſo admitted himſelf Tenant, the plaintiff ouſted him of this plea by chooſing another Tenant, who is named, and the aſſiſe awarded upon it, 43 *Aſſ. P.* 7. *Aſſiſe* 350.

The Tenant alledged that he had execution of a Statute made by *T.* againſt the Plaintiff as feoffee, and the Plaintiff ſued a re-extent, ſuppoſing the extent to be of a leſſe value, and found againſt him &c. now the plaintiff may not ſay that the Tenant delivered the eſtate before to *T.* in lieu of acquittance, becauſe he had ſued a re-extent, and alſo he is put to an *Audita querela* &c. 43 *Book of Aſſiſe. P.* 7. *Aſſiſe* 351:

In Aſſiſe the Tenant ſaid, that he aſſigned Dower to the Plaintiff, and that the Plaintiff by Deed confirmed to the Tennant who was then in reverſion to hold during her liſe, and it was holden that all took effect by the deed withthout livery, *Quere*, but if ſo by Leaſe, Releaſe or Surrender, 44 *Aſſ. P.* 3. *Aſſ.* 355.

A Fine pleaded againſt an Infant, ſhall put him to anſwer, 8 *Ed.* 2. *Aſſiſe* 414.

Aſsiſe brought by many againſt many, a Releaſe of Actions perſonall,

by

by one of the plaintiffs, is a Bar for him onely, as the non ſuit of one in a *Quare impedit*. So in ward of the body, the releaſe of the one ſhall not hurt the other, but gives him advantage to have the whole, *M.*30. *Hen.* 6. *Barr* 59.

Aſſiſe againſt two, the one makes default, the other pleads a deed of the anceſtor with Warranty of the whole, yet it ſhall be a Bar but for the moyety, if he claim no more, 13 *Ed.*3. *Bar* 254.

In an aſsiſe the Tenant pleads in Bar, that *J.* was ſeiſed untill he was diſſeiſed by *D.* who enfeoffed the plaintiff, whereupon *J.* reentred, and enfeoffed us, a good Bar in aſsiſe, not in Treſpaſſe, becauſe it is not an immediate entry, 5 *H.*7.*fol.*11.*vide ſupra B.*9 *H.*4.

And note, that no Bar is good in an aſsiſe, unleſſe he which pleads it takes upon him the Tenancy, 20 *H.*6.*fol.*38.19 *Ed.*3.*Title* 35.

Avowry.

I. *What Perſon may plead* rien arere, *or levied by Diſtreſſe, and where it may be pleaded.*

Vide C. 9. *part in the Caſe of Avowry acc.* 1. 4 *b* 4.317 *E.*3 14, *&* 15.

A Stranger to an avowry ſhall not have this Plea, and becauſe that he in Reverſion joyns in aid, and the Avowry is made upon him, the Termor ſhall not plead, nothing behind, if he in Reverſion will not, in like manner he ſhall not plead Dower, ſeiſed of the Services, 2 *H.*6.*fol.*2,3. *Avowry* 1. 22 *Hen.*6.*fol.*3. *Avowry* 14.

*VideC.*9. *part in Bucknells caſe, acc. Ne unq. ſeiſ. of the ſervices generally is no good Plea, but ne unq. ſeiſe of part of the ſervices is a good plea.*

But a ſtranger may plead *hors de ſon fee*, or any thing *tant.amount*, not *rien arere*, nor *levie per diſtreſſe*; a Seigniory, and are in the right 34 *Ed.* 3. *Avowry* 257. 3. *Ed.* 4. *Avowry* 186.

But the Feoffee may plead *rien arere*, if the Lord avow upon him, or that he was never ſeiſed by the hands of the Feoffor &c. 18 *Ed.* 2. *Avowry* 217.

Note, it was r ſolved H.17. *in Co.*1.B. *in Laiton and Granges caſe, that now by the Statute of* 21 *h.*8, *cap.*19. *a ſtranger may plead any Plea in Bar of* quod ſit *by the Equity of the ſaid Statute.*

II. *What*

II. *What perſons may plead tender of ſervices or Rent, and who not, and how they ſhall be pleaded, and who may plead, that he upon whom the Avowry &c. puts his beaſts in the Land taken for diſtreſſe.*

Termor or Bailiff may plead a tender, but the tender of a ſtranger ſhall not make a privity, but good for payment where there was a privity before, 2 *H.6.fol.* 4. *Avowry* 1. 1 *H.7.fol.*27 So a Termor or Bailiff may not attorn upon the Grant of the Lord, 39 *H.6.fol.*3 41 *Ed.*3.*f.*26. Tender by a ſervant is good of rent or on an obligation, 2 *H.6 fol.*3. *Quare* of the tender of a diſſeiſor or Tenant of *pearavaile*, of ſervices due, for ſeiſin of them by their hands is ſufficient, 8 H. *fol.*18,19. *Vide* C.9 *part.* 22 *acc.* 32 *h.*6.23.

And there it is ſaid, if the Lord come *&c.* and the Tenant tender him part of one Term he may refuſe it, and diſtrein for all, but if the Rent be two terms arrear, and he tender the whole of one Term, the Lord may not diſtrein for that, but for the other he may, and the tender ſhall be upon the Land, and at the time of the diſtreſſe taken, 2 H.6.*fol.*3. *Avowry* 1.39 H. 6. *Bar* 79. So if the Lord diſtrein for an amerciament in the Leet, 45 *Ed.*3.*fol.*9 *Avowry* 80. 2 *h.*6.*by* Sotteſmore.

And the Tenant ought to take notice at his peril, for what thing the Lord diſtreineth, and tender any ſumme if he hath not notice, as 2 *d.* &c. with this, that he is ready &c. if more be due &c. then the Lord ſhall not diſtrein without ſaying for what &c. 45 *Ed.*3.*fol.*9. 20 *h.*6.31.*b. acc.*

And it was ſaid there, that if the Lord hath taken a Diſtreſſe, and the Tenant make tender before he lead it away, and the Lord refuſe, that this is a wrongfull diſtreſſe by ſome 45 *Ed.*3.9. *Vide* C.8.*part:* *h.*6. Carpenters *caſe.*

The Feoffee being a ſtranger to the Avowry, may plead that to the fealty, he tendred it to *L.* before the taking, and hath been at all times ſince ready to do it, and as to the reſidue traverſe the Seiſin, 31 *Ed.*3. *Avowry* 111. *&c.* 30 *Aſſ.*30. 13 *h.*4.17.*acc.*

But tender of Homage out of the Land is good, and taking a Diſtreſſe without new Demand is tortious, 21 *Ed.* 3. *Avowry* 116. The ſame Law is of fealty, 21 *Ed.*4.*fol. Avowry* 42.

If the Lord diſtrein after tender, the Tenant in his replication need not ſay *uncore priſt*. becauſe the diſtreſſe was tortious, 4 *Ed.*3.*fol. Avowry* 166

If the Rent of my tenant be arrear three years, and he tender that of the firſt year, I need not receive it, if he do not tender me damages alſo, ſo of the ſecond, but of the laſt year he need not, and it is ſaid, that although he tender the rent of the laſt year, yet I may diſtrein for the firſt, and an acquittance for the Receipt of an annuity of the laſt year, it was no Bar but onely for that year, 39 H. 6.*fol. Bar* 79.

In a *ceſſavit*, he ought to tender all the arrrears, for the Lord ſhall not avow for any ſervice due before the Ceſſation, nor pending the Writ, and

there he tendred 6 d. for two ſuit dayes of Court, 17 *Ed.* 3. *Ceſſavit* 19.

It was agreed, that he which hath made an Acquittance of the laſt Term, ſhall not avow for any Rent due before, 11 *H.*4. *fol. Avowry* 55. *Contra* 39 *H.*6.

A ſtranger may ſay, that he upon whom the Avowry &c. puts in his Beaſts ready to a diſtreſs, or he himſelfe tendred the Rent before the diſtreſs &c. *per Newton*, 22 *H.* 6. *fol.* 3. *Avowry* 14. And note, that the Lord may refuſe this time, and diſtrain at another time, ſo that the tenant ought to be ready at every day, but for homage after tender, he ſhall not diſtrain without a new requeſt, 20 *H.*6. *fol.*33. So for fealty, 21 *Ed.* 4. *fol. Avowry* 42.

A Feoffee ſhall not compell the Lord to avow upon him, without tendring the whole Rent and Arrearages, 20 *Ed.*3. *Avowry* 125. and this before the feoffment and after, 7 *H.*4. *fol.* 14. 4 *Ed.*3. *Avowry* 166.

One joyntenant may tender for his companion as a Bailiff for his Maſter 1 *H.*7. *fol.*27. 39 *H.*6. *fol.*3. Not ſo after he hath loſt by default in a *Ceſſavit* 40 *Ed.*3. *fol* 40. and of a Bayliff, *Vide* 16 *Ed.*3. *Avowry* 90.

A Feoffee cannot tender the homage nor fealty of the Feoffor, where not corporeall, but Rent and Harriot he may, 7 *Ed.*4. *fol.*26.

III. *What perſon may plead* Unques ſeiſi *of ſervices generally, or* Unques ſeiſi *after limitation, how and when it ſhall be pleaded, and where the ſeiſin or tenure may be traverſed.*

A Stranger to an Avowry may not plead, Never ſeiſed of the Services, nor may traverſe the Seiſin of the Lord, 2 *H.*6. *f.* 3. and 4. *Avowry* 1. But the tenant himſelfe may, that he holds of another, without that that the avowant was ever ſeiſed after limitation of aſsiſe, 10 *H.*6. *f. Avowry* 9. 30 *H.*6. *fol.*6. *Avowry* 15. 16 *Ed.*4. *fol.*12.

C. 9. part. Bucknels *caſe, &c.*

Ne unques ſeiſi of all his ſervices generally, is no plea, but he ought to traverſe the tenure, but good of ſome parcel where he confeſſeth a tenure, 16 *Ed.*4. *fol.* 12. So *ne unques ſeiſi* by his hand againſt the Grant of the Seignory before attornment, 9 *Ed.* 2 *monſtrants* 41. 12 *Ed.* 3. *Avowry* 104.

Unques ſeiſi after limitation of aſsiſe is good, 22 *H.*6. *fol.* 3. But there he ought to confeſs the tenure, 15 *Ed.* 2. *Avowry* 214. So alwayes when one will traverſe part, 18 *Ed.*3. *Avowry* 97. But he which confeſſeth ſeiſin of Eſcuage, although it be by wrong, ſhall never traverſe the ſeiſin of the homage, 21 *Ed.*3. *Avowry* 115.

And

And there it is ſaid, that J. may not traverſe a Seiſin, but onely of that for which he avoweth, as if it be ſaid that J. hold by fealty and rent, and avow for Rent, I may traverſe the ſeiſin for it alone, *Contra* 16 *Ed.* 4. *f.* 12. 21 *Ed.* 3. *Avowry* 115. and 21 *Ed* 4. *f.* 76. agreeth, and 26 *H.* 8. *fol.* 1. 33 *H.* 6. *Ceſſ.* 1. and there he took ſeiſin of the reſt by Proteſtation, 2 *Ed.* 3. *fol.* *Avowry* 169. and 18 *Ed.* 3. *Avowry* 72. So he that traverſeth ſeiſin ought to confeſs the tenure, for if there be no tenure, he ought to plead *Hors de ſon fee*, if a ſtranger, and if privy to diſclaim &c. But ſee, that where the Lord avoweth upon the Feoffee and alledgeth ſeiſin by the hands of the Feoffor, he may traverſe the ſeiſin be the hands of him upon whom &c. generally, 19 *Ed.* 2. *Avowry* 122. and 124. 20 *Ed.* 4. *fol.* 17. 10 *H.* 6. *fol.* 7.

It was adjudged 26. Eliz. in the common Pleas, and taken for a rule, that where the parties agree in the tenure, there the ſeiſin is traverſable, where they do not agree in the Tenure, there the Tenure is traverſable. C. 9 pt. Bucknels caſe, 17 Car. in Co. B. Weſtroes caſe adjudged acc.

Seiſin of Services is not traverſable in right of a Ward, nor in Cuſtoms and ſervices, 31 *Ed.* 3. *Wards* 116. nor in reſcous, nor in *Ceſſavit*. But there if he demand more ſervices then he ought, the tenant ſhall confeſs the reſt, and may traverſe the ſeiſin or tenure as to them. *Quære.* 5 *Ed.* 4. *fol. acc.*

Avowry for 2 s. Rent in 16 Acres of Land, the Plaintiff may ſay, that he holds theſe 16 Acres, and other 16 Acres by 2 s. rent, without that that he holdeth theſe 16 Acres only, & ſo traverſe the tenure, becauſe they agree not in the quantity of the Land, 20 *H.* 6. *fol.* 22. *Avowry* 13. But if he hold alſo by a leſs ſervice, he may ſay, *ut ſupra*, without that that he holds, *modo & forma* &c. 13 *H.* 7. *fol.* 26. Or without that he holdeth the 16 Acres onely, and by the ſervices ſuppoſed, by *Bryan* for the miſchiefe, although double *M.* 8 *H.* 7 *f.* 5. 8 *Ed.* 4. *f.* 20. *&c.*

A ſtranger ſhall not plead in abatement of Avowry, without conveying by whoſe Eſtate, but if the Lord avow upon the one Parcener, the other may abate for it, and ſo may her feoffee; but if there be two Parceners Tenants in taile, the one makes a feoffment, and the Lord may avow upon the other, and ſhe not abate this Avowry, 18 *Ed.* 3. *Avowry* 98.

Vide, it is ſaid, that ſeiſin of Eſcuage is not traverſable, becauſe it is never due, but when it is granted by Parliament, 13 *H* 4. *f.* 6.

IV. *Where one may make ſeverall Avowries of one entire thing, taken at one time, and where two Perſons may make ſeverall Avowries for one thing, taken at one time, and where not.*

Hales faith, if I avow the taking of three horſes for Rent of three years entirely, if part be arrear, I ſhall have return of all, ſo impertinent that the Plaintiff ſhall have any damages, but if he hath made an Avowry of the one, for one term &c. the return ſhould be accordingly, and then the Plaintiff ſhould have damages of the Reſidue &c. In like manner if the

Lord take one horſe, and make ſeverall Avowries, as for Rent-ſervice, and Rent-charge granted by the Plaintiff, and the one is found for him, and the other againſt him, he ſhall return, and the other ſhall have damages 2 *H.*6. *fol.*3. and 4. *Avowry* 1. But the Law ſeems otherwiſe in the former caſe, 5 *H.*7. *f.* 23.44 *Ed* 4. *f.*13. *Vide Return of beaſts* 11.

Replevin againſt two, the one avowes for the taking of one Oxe, and the other of the other, and good, and the demandant compelled to anſwer to the avowry ſeverally, 16 *Ed* 3. *Avowry* 97 94. But if every one avoweth ſeverally the taking of all the Oxen it ſhall abate, becauſe they cannot have return accordingly, 21 *R.* 2. *Avowry* 262. So where every one avows the taking of one Oxe ſeverally, 3 *H.*6. *f.*44.

V. *Where one Joyntenant or Parcener may avow for his moyety, or may confeſs as Bayliff of the other, and where Avowry may be by Husband and Wife, or by the Husband alone.*

A Rent charge diſcends to two Parceners, the Bayliff of the one confeſſeth for her portion only before partition, and good, as if there be three Parceners, and the one grants to two 100. s. Rent, *ſol.* 50 s. to the one, and 50 s. to the other, for equality of partition *&c.* The Bayliff of the one confeſſeth for his 50 s. only, 2 *H.*6. *fol.*14. *Avowry* 3.44 *Ed.*3. *Avowry* 75. But there it was after partition.

Conuſance made as Bayliff of the one Executor for his part by his Commandment, tis nought; for the one Executor cannot have an Action alone, nor an Avowry, which is in lieu of an Action, and there it is ſaid, that a man may not make Conuſance as Bayliff of one of the joyntenants alone, nor as Bayliff of the Husband alone, where it is in right of his Wife, and if the one joyntenant, or one Executor himſelf avow, he may avow for the moyety for himſelfe, and confeſs as Bayliff of his companion for the reſidue, otherwiſe it ſhall abate, 12 *R.* 2. *Avowry* 88. 16 *Ed.* 3. *Avowry* 23.

If in a Replevin againſt two joyntenants, the one doth appear by his Bayliff, the other in proper perſon denieth the taking, yet the Bayliff may acknowledge the taking for his Maſter, and likewiſe for the other who hath denied it, becauſe he cannot acknowledge for the one alone. But if the ſole Avowant deny the taking, his Bayliff may not make acknowledgement 14 *Ed.*3. *Avowry* 118. So if both the Joyntenants have appeared in their proper perſons. But if I, who have commanded my ſervant to diſtrain, confeſs the taking tortious, this ſhall not bind him, *per Danby*, 8 *Ed.*4. *fol.*17.

Husband and Wife, and the three joyntenants of a Corody, with a clauſe of diſtreſs, the Husband ought to avow for himſelfe and his Wife, and

and to make Conuſance as Bayliff of the other, 27 *Ed.* 3. *Avowry* 136. So if the one Parcener be to avow, 3 *Ed.*2. *Avowry* 187.

But if all the joyntenants or Parceners do appeare, every one may avow for himſelf only 5 *Ed.*2. *Avowry* 208. But it ſeems that the one Jointenant of a Common may not put in the beaſt of his Companion, but as his Bayliff, 15 *H.*7. *fol.*10.

If the Lord hath uſed to have 20 s. every year of the Deciners within his Hundred, and to levy it of the chiefe Deciner, and he hath a diſtreſs for contribution, ſuch Deciner may avow in his own right, and not as Bayliff &c. 6 *Ed.* 3. *Avowry* 191. So of a Commoner, 7 *Ed.*3. *Avowry* 149.

If there be a Corporation of Mayor and Bayliffs, and they have toll by preſcription, the bayliff being to avow ſhall not make conuſance as Bayliff to the Mayor, but ſhall avow &c. 20 *Ed.*3. *Avowry* 29.

Guardian in ſoccaſe ſhal make conuſance for the heir, but ſhal not avow becauſe he is not to have the thing in his own right, 7 *Ed.* 3. *Avowry* 150.

VI. *Avowry in ſuch place, whereof the place in the Count is parcell, when the Plaintiff ſhall ſay, that it is not parcell.*

AVowry for Rent-charge in the place where &c. the Plaintiff may ſay, that the place &c. was not parcel of the Land charged, 3 *H.* 6. *fol.* *Avowry* 4.

A Replevin in *D.* the Defendant avoweth in a Cloſe called *S.* whereof the place &c. for Rent-charge, this is not good, without traverſing in *D.* But if he avow in part of the Land called *S.* whereof &c. it ſhall be intended to be the ſame place whereof the Plaintiff declared, without traverſe, or to ſay, that it is known by the one name, or the other, and the Plaintiff may ſurmiſe it, 4 *H.* 6. *fol.* 9. *Avowry* 5. But the Book at large takes not this diverſity. And ſee, one may juſtifie, that the place was belonging to *T.* who infeoffed him, but the better pleading is, that *T.* was ſeiſed of a houſe &c. whereof the place &c. and him infeoffed, 3 *H.*6. *fol.*35.

The Avowant ſaith, that *S.* whas ſeiſed of Land called *W.* and chargeth the Plaintiff, that the place where &c. is not parcel of the Land called *W.* and was compelled to traverſe that it was not parcel of the Land charged, 44 *Ed.*3. *Avowry* 75.

The Defendant avoweth that the Plantiff holdeth a Plow-land of one *J.* by ſervice, as parcel of the Mannor, the Plaintiff may well ſay, that the ſervices are not parcel, yet hereby he acknowlegeth the Land within his fee &c. 48. *Ed.* 3. *Avowry* 84.

A Replevin of taking in *D.* in a place called *S.* the Defendant in *D.* in a place called *E.* without that, that he took in *S.* the Plaintiff ſaith, that *S.*

and

and *E.* are one place known by both names, without that *E.* is another place holden no form, but he may ſay, that he took in S. known by the name of *S.* and *E.* without that that he took in *E.* known by ſuch name onely, 3 H.6.*Iſſue* 45.

The place is traverſable in a replevin, not in treſpaſs, 22 Ed:4. *fol.*51.

VII. *Where the Avowant ought to have ſeiſin by the hands of a perſon certain.*

Note, it was adjudged, H.17 Car. in Co. B. in Laiton and Granges caſe. That traverſe of ſeiſin generally by the hands of &c. is not good without admitting a Tenure.

IF preſcription be made upon a certain perſon and his anceſtors, there the avowant ſhall alwayes lay the Seiſin by the hands of a certain perſon, but if avow for rent of a Town or Comminalty, Seiſin by the Town is ſufficient &c. 4 *H.* 6 *fol.*29. *Avowry* 7. 14 *H.*4. *Avowry* 60.

If the Lord of a Mannor or Town preſcribe to diſtrein for Fines or ſuch like, of all the Tenants within the precinct, as for marrying of his daughter without licence, there Seiſin needs not, 43 *Ed* 3 *fol.*5. *Avowry* 68. So the Lord may diſtrein his Bedle appointed by his Tenants, by preſcriptions to gather his Rent &c. without laying Seiſin certain, 44 *Ed.* 3. *Avowry* 73.

The Sheriffe may avow for his fee by preſcription, for not coming to the Turn, upon an Abbot; and laid the Seiſin in his predeceſſor: it ſeems this needed not, if he had juſt cauſe: but ſee, this is extortion, 42 *Ed.*3. *fol.* *Avowry* 66.

He that avoweth for an amerciament in a Court Leet, for not coming, or for purpeſture, needeth not to alledge Seiſin, 4 *Ed.* 3.*fol.*10. *Avowry* 161.8 *Ed.*2. *Avowry* 212.14 *H.*4. *Avowry* 60.

He that avoweth for ſuit reall making Title by preſcription, ought firſt to alledge Seiſin certain, and after generally by the hands of the Tenants, 11 *Ed.*3. *Avowry* 101. for it belongeth not of right to the Mannor or the Court.

He which avoweth for a Fine of alienation, or for a Herriot appendant to an Honor or Mannor, muſt lay the Seiſin certain, and this by the hands of the anceſtor of the Tenant, but it ſeems ſufficient by the hands of any Tenant, 14 *H.*4.*fol.*3. *Avowry* 60.

Avowry upon Leſſee for life, or my Donee in tail, is good without laying the Seiſin, 8 *H.* 6.*fol.* 18, & 19. So of eſcuage alledged, yet not traverſable, 13 *H.*4.*fol.*6. and ſo of relief.

In Avowry for ſervices, Seiſin ſhall be alledged by a certain hand, and ſuch who was a ſufficient Tenant, and due, otherwiſe it is not good, 11 *H* 4 *fol.* *Avowry* 54.

VIII.

VIII. *More of Seiſin, and what Seiſin is ſufficient, and by what hands to maintain Avowry, and where otherwiſe ſufficient.*

SEiſin by the hands of the Tenant at will, or of him that hath nothing is not good, 8 H 6. *fol.* 18, *&* 19 *avowry* 8. nor by the hands of a Termor to make privity &c. 2 H.6.*fol.*4. and Seiſin by the hands of the Diſſeiſor ſhall bind the Diſſeiſee for ſervices due onely, and Seiſin by the hand of the Feoffor after alienation ſhall bind the Feoffee, 8 H.6.*fol* 18, *&* 19. So alwayes Seiſin by the hands of him upon whom the Avowry ſhould be, ſhall bind the party who commeth afterwards &c. *Vide* C. 4. *part* Bevil's *caſe acc.*

But Seiſin of one jointenant ſhall not bind the other, ſo neither the payment of the Termor or Bailiff, 39 H.6 *f.*3. 2 H.6. *f.*3.8 Hen.6.*fol.*18. *ſcil.* for making privity: but ſome think that Seiſin by Guardian or Termor is ſufficient to have an Aſſiſe, and they agreed that Seiſin by the hands of the Tenant of the freehold is ſufficient, 8 *aſſiſe p.*16. *vide* 20 *H.6.fol. avowry* 11. He in the remainder bound by ſuch Seiſin by Tenant for life, and Seiſin by Tenant by the courteſie binds the heir, 12 *Ed.* 3,*avowry* 104. and Seiſin by the hands of a Husband binds the wife, 11 H. 4. *f.*28.*avowry* 54.

Seiſin of eſcuage is ſeiſin of homage and fealty, 10 H.7. *fol.* 15.31 *Ed.* 3.*avowry* 103. 21 *Ed.*3.*avowry* 115.188.19 *Ed.*2. *avowry* 224. or relief, 4 *Ed.*2.*avowry* 200. C.4.*part* 9 *acc.* 13.E.4,5.

Seiſin of Rent is of fealty, 8 *Ed.*4.*fol. avowry* 36. 29 *Ed.*3.*fol.*27. *avowry* 150.5 *Ed.*2.209.188. 19 *Ed.*2.*avowry* 224. ſeiſin of Rent is ſufficient for relief, 4 *Ed.*2.*avowry* 200. C.4.*part* 9.*acc.*

Seiſin of homage is ſeiſin of fealty, *Temp.Ed* 1. *avowry* 229. 3 *Ed.*2. *avowry* 188.

Seiſin of homage is ſufficient for relief, without Seiſin of eſcuage 13 H. 4.*fol.*6.197.31 *Ed.*3.*avowry* 131.

The Lord in Knights ſervice avoweth, and alledgeth ſeiſin of homage onely, or ſeiſin of eſcuage onely, it is ſufficient for homage,29 *Ed.*3. *avowry* 122. and ſeiſin of homage is ſufficient to avow for Knights ſervice, *Ed.*1.*avowry* 229. *Watſon* reports that ſeiſin of homage is ſufficient for all ſervices, and ſo it ſeems by the Books.

It is held that ſeiſin of Rent is ſeiſin of all ſervices to make avowry, 44 *Ed.*3.*fol.*11.M.8.*Ed.*3.*avowry* 153.45 *Ed.*3.*fol.*28. although of divers natures, and attorneyment by a penny before the day of payment is ſufficient for an Avowry, not for to have an Aſſiſe, 5 *Ed.*4.*fol.*2. and be it by the Tenant or his anceſtor, 20 H.6.*fol. avowry* 12.35 H.6.*fol.*51.*avowry* 27.40 *Ed.*3.*fol.*34. 34 H.6.*fol.*46. 42 to have an Aſſiſe *aſſiſe* 101. C 9 *part, it is no actuall ſeiſin of fealty, to maintain an Aſſiſe.*

If I be ſeiſed by coertion of a diſtreſſe, by the hands of him who holds

not

not of me, it is ſufficient for him to traverſe the tenure, without ſpeaking of the coertion, but if he hold of me, he ought to acknowledge the tenure, and to incroachment to ſay, that it was by conſtraint &c. 22 *H.6. fol. Avowry* 14. 47 *Ed.3. fol.* 7. where it is held, that ſeiſin by conſtraint of ſervices due, is good, and void for the incroachment. And ſeiſin by exceſſive diſtreſs is ſeiſin by conſtraint, 42 *Ed.3. fol. Avowry* 67.

Seiſin had time out of mind, by conſtraint of diſtreſs ſhall not be always avoided, 13 *Ed.4. fol.6.*

Suit to Court had by Coertion may be avowed for this cauſe, 32 *Ed.* 3. *Avowry* 32. 10 *Ed.3. fol. Avowry* 157.

Seiſin of a Roſe the firſt year, is ſufficient to have an Aſſiſe of rent of the next 5 *Ed.* 4 *fol.2.* 44 *Ed.* 3 *fol.* 32.15 *Ed.3. Execution* 63. So the ſeiſin of the rent of one Term, is ſufficient to have an Aſſiſe at another Term, 12 *Ed.4. fol.7.* 5 *Ed.4. fol.2.* So ſeiſin of a peny before the day of payment, 34 *H.6. fol.* 46.

The Lord hath had fine and amerciament of his Tenants for not comming to his Court, this is not ſeiſin of the ſuit. *Keble*, ſeiſin of part, is not of the whole in *per quæ ſervitia.* But ſeiſin upon recovery by Turfe or Twi : is ſufficient to have an Aſſiſe, or to avow for all ſervices, and recovery in right is by it ſelfe ſufficient title in a *Quare impedit*, without preſentment, 13 *H:7. fol:16.* 45 *Ed:3. fol.26.* 5 *Ed:4. fol:* 2. 37 *H:* 6. *fol:* 42. 3 *Ed:3. Avowry* 444.

If a man grant four ſeverall rents of ſeverall natures, Attorneyment by a penny in the name of all is ſufficient to avow, 25 Ed:3. *fol: Avowry* 134. 22 *book of Aſſiſe p.96. Attornement* 14. *Contra* 7 *H:4. fol:10. Avowry* 56. *Wilby* ſaith, that the payment of a rent of a Term to come is not ſufficient to avow. *Hill contra*, 25 Ed: 3. before, and 10 Ed: 3. *fol: Avowry* 157. agreeth to the 25. before, and that it is ſufficient without alledging ſeiſin in the Grantor. Agreeth, Ed: 1. *avowry* 251. Or he in remainder may avow by Attorneyment made to the Grantee for life of a Signiory. But *contra hoc.* 45 Ed:3. *fol.28. Vide* the difference between a fine and a Deed, 20 *H.6. fol.7.*

A man may avow by Attorneyment for the ſervices only of right due, and therefore he ought to alledge ſeiſin of the ſervices before, if he will avow, 20 Ed: 3. *Avowry* 131, *per Watſon.* But there the ſeiſin was by the hands of the Tenant in taile, and therefore he was compelled to alledge ſeiſin of the ſame ſervice before the taile. *Vide contra* 10 Ed: 3. *ſupra F.* But it ſeems he ought to alledge ſeiſin in his Grantor before the Attorneyment, 41 Ed: 3. *avowry* 65. But *Vide* 20 *H. 6. fol. Avowry* 11. that it needs not, 4 Ed: 2. *avowry* 203.

Seiſin of fealty is not ſufficient to have an Aſſiſe, 20 *Hen.* 3. *aſſiſe* 433.

But *Forteſcue* thought attorneyment ſufficient ſeiſin to have an aſſiſe, 28 *H. 6. fol.* 6. which is not Law, if it be not paid as part of the rent, 7 Ed. 3 *fol. avowry* 141. 37 *H:* 6. *fol.*38. *Littleton in attorneyments.*

Forteſcue

Forteſcue, that a recovery adjudged was ſufficient to have an Aſſiſe, 28 *H.6.f.6. contra.* 21 *Ed.3. Scire fac.* 2 H.4.*fol.*25. 37 H.6.*fol.*15. & 16. 50 *Ed.3. fol. Colluſion* 27. but there it is ſaid, that a recovery in a *Ceſſavit* giveth Seiſin, for it ſhall be tendred in Court, & *vide* 15 *Ed.* 4. *fol.*10. that a recovery adjudged, is not execution.

Seiſin Land in the anceſtor and heir is double, for the firſt binds, but ſeiſin in Leſſee for life, and he in remainder is not double, 20 H.6. *fol. Avowry* 11. & 12. and ſeiſin in the avowant, or his anceſtor is ſufficient, 34 *H.6.f. Avowry* 23. & 24. 13 *Ed.3. Avowry* 102. 31 *Ed.3. Avowry* 103.

An Abbot may avow by his own ſeiſin, or the ſeiſin of his predeceſſor, 34 H.6.*fol. Avowry* 25. 11 H.4.*fol. Avowry* 53. but if the ſeiſin in his predeceſſor, he ought to ſay that he held of his predeceſſor, but the heire may well ſay, that he holds of himſelf, and ſhall lay Seiſin in his anceſtor, *ibidem*, and ſo made the ſucceſſor, 47 *Ed.* 3. *fol. Avowry* 82.

If the Lord convey by a *Que* eſtate, he ſhall alledge the certainty of the Land holden, lay the ſeiſin in the Grantor, and ſay by the hands of what tenant, 33 *Ed.3 Avowry* 253.

Feoffee bound by ſeiſin by the hands of his feoffor, 41 *Ed.* 3. *Avowry* 65. 20 H.6. *Avowry* 11. 12, 13. 7 *Ed* 3. *fol. Avowry* 144. 18 Ed.2. *Avowry* 217.

Seiſin of ſervices Land in the Grantor in Leaſe for life, and in him remainder in tail or fee ſeemeth double, if the grant were by fine. *Quare* if by Deed, for all as one eſtate, 20 H.6. *fol.* 7. & 8 *Avowry* 217.

If tenant for life of a Mannor atturn to the Grantee of the reverſion, this ſhall bind all the tenants *peravaile* after 20 H.6. *fol.*8. otherwiſe it is of a Seigniory in groſſe.

After that the Grantee himſelf is ſeiſed of ſervices, he may avow without laying ſeiſin in the grantor &c. 9 Ed.2. *Monſtrants* 41. 20 Ed.3. *Avowry* 131.

Tenant in Dower avoweth by ſeiſin of her husband, 14 H.4.*fol. Avowry* 60. and this without attornement. *Temp* Ed.1. *Avowry* 227. and the heir may avow upon the tenant in Dower without ſeiſin, *Avowry* 159. and a man upon his own Feoffee before the Statute, 2 Ed.2. *Avowry* 185. but ſee there, that the grantee of the Seigniory nor his heir may not avow without ſeiſin &c.

The Lord ſhall not be eſtopped by acceptance of ſervices, by the hands of diſſeiſor generally, but if he accept them of him, as of his right tenant, he ſhall, but otherwiſe it may be underſtood, that he accepted for payment as of his Bailiff, 41 Ed.3. *fol.*16. 16 Ed. 3. *Avowry* 90. 2 Ed 3. *fol.*33. *Avowry* 170.

Seiſin by tenant in tail ſhall bind the Iſſue for ſervices due, not otherwiſe without ſeiſin alſo alledged in the Donor, 31 Ed. 3. *Avowry* 131.

Where the Avowant conveys to the Plaintiff a particular eſtate, he ſhall ſhew the commencement thereof, and lay the ſeiſin in the Donor or Leſſor,

although he hath been ſeiſed by the hands of the particular tenant. So where he conveys the Fee to the Plaintiff by Feoffment, if he hath not been ſeiſed by the hand of the Plaintiff, but if he hath, he may well avow upon him without other ſeiſin or conveyance, 41 Ed. 3 *fol.* 25. of tail, 20 H. 6. *fol.* 7. 8. *Avowry* 11, 12, 13, 14.

Seiſin of ſervices during the time that the tenant is in ward of the King, is ſufficient to avow, 13 H. 7. *fol.* 15. and there *fol.* 16. ſeiſin of a Fine for not doing of ſervices is ſufficient to avow &c.

IX. *The form of pleading when they agree not in the quantity of the Land, or in the quantity of the ſervices.*

IF the Lord avow in 20 acres for 2 s. rent, where the tenant hath aliened 10 acres to a ſtranger before, the Plaintiff ſhall ſay it, and that the ſtranger hath tendered &c. and as to the reſidue *nothing arreare*, and for the part of the ſtranger judgement of the Avowry, but when he ſaith, that he himſelf holds 20 acres, and others &c. how he ſhall plead, then ſee 20 H. 6. *fol.* 22. *Avowry* 13.

The Avowant ſuppoſeth four yards of Land holden by fealty, and 10 s. 4 d. rent, the plaintiff ſaith, that he holdeth two Cottages by fealty and 6 s. 4 d. without that that he holds the four yards as he alledgeth, Judgement &c. this is held taken in Bar of the Avowry, for this diſchargeth of the Land, he ought alſo to anſwer to the ſeiſin, *Quære*, but after he ſhews that he holds by ſeverall tenure, 5 H. 5 *fol.* *Avowry* 48.

Avowry for 20 s. where in truth he holds by 10 s. and the other 10 s. is had by conſtraint, he may confeſſe the tenure without traverſing that of the reſidue, but may ſay as to the reſidue, that it is by conſtraint, *&c.* 30 *H. 6. fol. Avowry* 19. But if the Lord avow upon a feoffee for ſervice of 20 s. it no plea that the feoffor enfeoffed him to hold by 10 s. for he muſt render as his feoffor ſhould &c. 7 *H.* 4 *fol.* *Avowry* 51.

If the Lord make ſeverall avowries of two acres holden by one entire ſervice, the plaintiff may ſhew the matter in abatement of the Avowry, but then it behoves him to alledge, that he is tenant of both the acres, otherwiſe he ſhall not abate the Avowry made upon a ſtranger &c. 43 *Ed.* 3. *Avowry* 70. So where an entire Avowry is made upon ſeverall tenures, 34 *Ed.* 3. *Avowry* 258. and if the Lord make an entire Avowry in three acres for fealty, ſuit &c. the Plaintiff may ſay, that the one acre is held by ſuit, the other by 12 d. rent, and the third by fealty for all ſervices, Judgement of the whole Avowry, 41 *Ed.* 3. *fol.* *Avowry* 77.

If a ſtranger be Tenant of part, where the tenure is by 10 s. and 10 s. is encroached upon the the feoffor by coercion, he may ſay that the ſtranger is tenant of part, and that he holdeth the reſidue by 5 s. Rent, and that it is not arrear, and that the other 10 s. was by coercion, and it is not double, for the coercion is all the effect, 47 *Ed.* 3 *fol.* *Avowry* 82.

and

and note that he ſaith, that the ſtranger is ſeiſed of parcell, without ſaying, that the avowant had notice, for the Avowry is good upon the Feoffee for the arrearages after the Feoffment without notice, 47 Ed.3.*fol.*4. 2 E.4.6. acc.

Alſo it is a good plea, that he was enfeoffed of two acres by 2 s. Rent, and *B.* of other two acres to hold by 2 s. Rent, Jugement of the Avowry upon him, for 4 s. in four acres, 31 Ed.3.*fol.* *Avowry* 114.

If the Plaintif ſaith, that he holdeth by leſſe Rent, and that it is not arreare, if the other reply that it is arreare, and maintain not the Avowry it ſhall abate, 48 Ed.3.*fol.* *Ceſſ.*16. but it ſhall not abate, but for the portion, *per totam curiam ibid.*

X. *The manner of conveying a Seigniory or Rent to the Avowant, or of the Tenancy of the plaintiffe, and where it ſhall be traverſed.*

THE Bailiff of *G.* confeſſed the taking, becauſe one *W.* held of *J.* the Grandfather of *G.* ſeiſed of this ſervice, and by his hands, and made diſcent to *G.* and the Plaintiff hath the eſtate of *W.* ſo acknowledged &c. and holden no plea, that *W.* had nothing at the time, for this is, *non tenure*, which is no plea in Avowry, but he might well ſay, that he had nothing but at will of *T.* who entred and enfeoffed us, *vide* 8 *H.*6.*fol.* *Avowry* 8.

A Bailiff juſtifieth upon *S.* as the true Tenant by the Mannor, becauſe *B.* was ſeiſed, and held of *H.* who was ſeiſed &c. and granted the Mannor and ſervices to *W.* who granted them back again to H. for life, the remainder to the defendant in tail, and conveys the Tenancy by diſcent of *B.* to the Plaintiff &c. 20 H.6.*fol.* *Avowry* 11.

A Bailiff juſtifieth by grant of the Seigniory to his Maſter, that one *T.* ter-tenant enfeoffed *S.* of the Tenancy, who atturned, whoſe eſtate the Plaintiff hath, the plaintiff ſaith, that *R.* was ſeiſed of the Tenancy, and granted it to *T.* for life, and granted the Reverſion to us and another, and *T.* atturned, without that, that *S.* had any other eſtate at the time, and a good plea, if he had made privity between *T.* the Feoffor and *R.* &c. 35 *H.*6.*fol.* *Avowry* 27.

The Lord may convey the tenancy to the Plaintiff of *W.* by *Que* eſtate, and avow &c. the Plaintiff ſaith, that he is ſeiſed joyntly with his wife of the feoffment of *J.* not of *W.* Judgement of the Avowry, and good, for where the Lord acknowledgeth the tenancy, he may alſo acknowledge the manner thereof, 22 *Ed.*4.*fol.*35. *per Watſon*, but ſee there it not ſpoken of whoſe feoffment they held jointly &c.

A Bailiff made Conuſance, for that, that *B.* held of *M.* and *J.* the father of *M.* ſeiſed by the hands of *S.* father of *B.* the Plaintiff hath aid of *B.* and they ſay, that *B.* was ſon of *K.* not the ſon of *S.* *Priſot*, it is

no plea, for if *B.* were not the ſon of *S.* but a diſſeiſor, the Avowry lieth againſt him. *Moyle*, alſo the plaintiff is a ſtranger to the Avowry, who ſhall not plead it, *M.* 34 *H.* 6 *fol.* 2. *Avowry* 24.

An Abbot avowed, for that *M.* held of his predeceſſor, who was ſeiſed &c. and enfeoffed the plaintiff, upon which he avowed &c. and the Plaintiff ſaid, that *M.* had nothing but in right of his wife, who had iſſue *J.* and died, *J.* entred and enfeoffed the plaintiff, Judgement &c. and a good plea, for although in what manner ſoever the plaintiff be in, the Avowry may be well made upon him, yet he ought to convey according to the matter, for Avowry made upon me as heir to my father, where I am in, as heir to my mother, it ſhall abate, 11 *H.* 4 *fol* 28. *Avowry* 54. 22 *Ed* 4 *fol.* 35. ſo Avowry made upon me as heir, where I am in by feoffment of my father, 4 *Ed.* 3. *fol.* *Avowry* 163. and 160.

A Prebend laieth ſeiſin in his Predeceſſor, and conveyeth to him by Collation from the King, the Temporalties being in his hands, he needeth not to ſpeak of the King had not other eſtate, 11 *H.* 4 *fol.* 17. *Avowry* 53.

An Abbot avows, for that he and all thoſe eſtate &c. have been ſeiſed of the Hundred, and good without ſhewing how he came to it, otherwiſe it is in a *quo Warranto*, 11 *H.* 4 *fol.* *Avowry* 57.

One avoweth as Lord of a Hundred, and layes ſeiſin of ſuit by the hands of *R.* and preſcribes in a *Que* eſtate of both parts, and that *R.* enfeoffed the plaintiff, and good, without ſaying what eſtate *R.* had, for it ſhall be intended fee by the Feoffment, 7 *E.* 3. *Avowry* 144. the plaintiff ſaith, that *R.* had nothing but at will &c.

The plaintiff conveyes the Mannor and Seigniory to the avowant by a *Que* eſtate, without ſhewing how, and the Tenancy to himſelf by a *Que* eſtate, and thereof ſhews a deed to hold by leſſe ſervices: the avowant ſaid, that he by whom the Plaintiff intitles us, never had any thing &c. and it was ſaid, that it is no plea, wherefore he ſaid, *nul tiel in rerum natura* &c. *P.* 20. *Ed.* 3. *Avowry* 246.

XI. *Where in an avowry one may conclude upon his true Tenant, or true Tenant by the Mannor, or upon the Tenancy by the Mannor, and where upon the matter.*

TEnant in tail, is Tenant by the Mannor to the Dower in Reverſion, but if the fee be in remainder over, he is very Tenant by the Mannor to the Lord Paramount, and in the firſt caſe the Donor is very Tenant to the Lord, and Tenant for term of life, where the remainder is over, is very Tenant by the Mannor to the Lord, otherwiſe he in Reverſion is very Tenant to the Lord, 20 *H.* 6 *fol.* *Avowry* 12. 20 *Ed.* 3. *Avowry* 131. 2 *Ed.* 3. *fol.* *Avowry* 170.

He in Reverſion with Rent reſerved grants the Reverſion, the tenant for life

life arturns, the Grantee is bound in a Statute to *T* who hath execution, and avows upon the Leſſee as his right Tenant by the mannor, 13 *H.4. avowry* 237. but note, that the Tenant in tail, in Dower or other particular tenant of a Seigniory ought to avow as upon their tenant by the Mannor, not their very Tenant by the Mannor, 26 H.6. *fol.* *avowry* 17. 4 Ed.3 *avowry* 162,163.

Tenant by the courteſie of a ſeigniory, the ter-tenant makes a Leaſe for life rendring Rent, he in Reverſion grants it, the Leſſee attorns, the grantee dies, his heir within age, Tenant by the courteſie ſeiſeth the Ward, and diſtreins for Rent, and avows upon the matter as within his fee, and held a good Concluſion, 38 *H.6. fol* 23. *Avowry* 29. 7 *Ed.3. fol. ultimo.*

Grantee of a Reverſion avows for Rent reſerved upon a Leaſe for years as upon the matter, 40 *Ed.3. fol.* 34. *Avowry* 64. 38 *Hen.6. f.* 23. So where Avowry is upon an execution, or if they do avow, for in theſe caſes the Rent is but a Chattell, 34 *Ed.* 1. *Avowry* 233.

XII. *Avowry for Rent after it is determined, and where one ſhall be compelled to juſtifie, and where by plea of the Maſter, the plea of the Bailiff or ſervant is taken away, or where he ſhall make ſatisfaction.*

TEnant for life rendring Rent, he in Reverſion diſtrains, the Tenant ſurrenders, yet the Leſſor may avow, becauſe he is to have the Rent, but if one diſtrain for homage, and the Tenant dieth, now he ſhall be put to juſtifie, becauſe he cannot have the homage, but if he who is Tenant for life dieth after Diſtreſſe taken for the Rent, yet the Avowry is good &c. 19 *H.6 fol.* 41. *Avowry* 10. 22 *Ed.4. fol* 36. the term expired.

If the Lord diſtraineth his Tenant for homage, after that he hath aliened in fee to a ſtranger, and before notice, the diſtreſſe is good, but if after notice, it behoves him to juſtifie, for he ſhall not have the homage, 7 *Ed* 4 *fol.* 26. 2 *Ri.2. Avowry* 85 & 8 *Ed.4 fol.* *Avowry* 36. & 22 *Ed.4 fol.* 36. where it is alſo ſaid, that if the Lord had poſſeſſion of the diſtreſſe within his fee, and the Tenant chaſe it out, he ſhall take it again well in another fee, and may avow, and 2 *R.2.* it is ſaid, if the Lord diſtrain for ſuit after the alienation, he may avow and have return, yet he ſhall not have the ſame thing, but recompence for it, *Avowry* 85.

Catesby ſaid, if the Lord avow for a hawk arrear before alienation of his Tenant upon the Feoffor he may avow, and if upon the Feoffee he muſt juſtifie, 22 *Ed.* 4 *fol.* 36.

In a Replevin the Defendant may juſtifie for Rent, and needs not avow, 15 *Ed.4 fol.* 29. So a Bailiff juſtifie and will not make Conuſance for doubt of diſclaimer and good, and he ſhall not have a return, 9 *Ed* 4 *fol.* *Avowry* 38.

In a Replevin againſt the Maſter and ſervant, the ſervant acknowledgeth

as

as Bailiff, the Maſter juſtifieth whereby the acknowledgement of the Bailiff is void, becauſe it appears that the Maſter would not have a Retorn, and although the Maſter doth avow, the acknowledgement of the Bailiff is but a juſtification, *& ſic, hic* for to excuſe him of damages, 35 *H.6.fol. Avowry* 47.45 *Ed.3.fol.1.*

In a Replevin againſt two, the one denieth the taking, the other acknowledged it as his Bailiff, and hath aid of him after iſſue, but he could not joyn. *Quære*, whether this acknowledgement be any other then a juſtification, 42 *Ed.3.fol.6.* and *vide* 15 *Ed.* 3. *Avowry* 107. where he ſhall not have aid in this caſe, and it was holden that the Bailiff cannot make acknowledgement to have a return for him that denied the taking, but he may acknowledge as Bailiff to him, and to another for the advantage of the other to have a retorn, 14 *Ed.*3. *Avowry* 118. 15 *Ed.* 3. before.

Gardian in Soccage made a Conuſance for the heir, but he ſhall not avow, 7 *Ed.*3 *fol. Avowry* 150.

XIII. *Where a ſtranger or privy to an Avowry may plead a deed to eſtoppe the avowant, and who ſhall have a* ne injuſte vexes, *or* contra formam Feoffamenti.

THE Lord may avow upon the Meſne for many ſervices which he ought to do, the Tenant *paravaile* may not ſay, that *T.* whoſe eſtate the avowant hath, enfeoffed the Meſne, whoſe eſtate he hath &c. by this deed to hold by leſſe &c. Judgement &c. becauſe he is a ſtranger to the Avowry, 22 *H.*6 *fol. Avowry* 14. alſo a ſtranger to the deed, ſo he may not plead it by way of eſtoppell, 7 *Ed.* 3. *fol.* 8. *Avowry* 143. but note, the Executor may ſay, that the Anceſtor of the avowant releaſed all his Seigniory to *T.* whoſe eſtate of the Teſtator he hath, ſo out of his fee, and good, but he may not conclude to the eſtoppell, *H.* 34.*Ed.*3. *Avowry* 257.*P.*18 *Ed.*3. *fol. Action upon the Statute* 15.

But where the Lord avows upon the plaintiff for 10 s. he may ſay, that *T.* whoſe eſtate the Lord hath, by this deed confirmed the eſtate to *S.* whoſe eſtate the plaintiff hath by 2 s. for all *&c.* Judgement if *&c.* 30 *H.* 6 *fol. Avowry* 20. 33 *H.6.fol Confirmation* 3.*P.*26 *Ed.*3.*fol. Avowry* 246.

The Tenant forejudgeth the Meſne, the Lord avoweth upon the Tenant for homage, and Rent due before the forejudgement, and hath ſeiſin by the Tenant, and by the Meſne of homage, the Tenant may not plead the deed of him whoſe eſtate the Lord hath to the Meſne, to hold by leſſe ſervices *&c* becauſe both ſtrangers, and the Tenant or his anceſtor hath done homage, 7 *Ed.* 3.3.*fol.*8 *Avowry* 143. But the plaintiff ſaid, that *T.* whoſe eſtate the avowant hath enfeoffed his Grandfather of the ſame Land by this deed, by leſſe ſervices &c. and it was holden, that although the

the avowant hath his ſeiſin time out of mind, that he ſhall anſwer to the deed, *Quære*, for ſeiſin is ſufficient to avow, 22 *Ed.*3. *fol. Avowry* 133. 14 *Ed.* 3. *Ceſſ.*28. but note, it is ſaid, that at the Common Law, ſeiſin is ſufficient, but by the Statute ſeiſin of many things cannot help againſt my deed, or the deed of my anceſtor, 11 *Ed.*3. *Avowry* 10[illegible]. 4 *Ed.*2. *Avowry* 201. and the Statute of *Marlebridge cap.*9. is underſtood of releaſe or Confirmation, as well as Feoffment. *Quære*, it ſeems it gives the form *contra formam Feoffamenti.*

The Plaintiff ſaid, that he whoſe eſtate the plaintiff hath did enfeoff *R.* by his deed of parcell, by 4 s. and another parcell to hold by 6 s. ſo he ſhould make ſeverall Avowries, and it is held that the avowant ſhall not have the tenure entire, but ſhall anſwer to the deed, and that this plea is given to the plaintiff inſtead of a *Ne injuſte vexes &c.* yet after the avowant had the averment notwithſtanding the Deed, 32 *Ed.*3. *Avowry* 114. *Pigot*, it ſeems becauſe he is a ſtranger to the Deed, but the party or privy ſhould be eſtopped, 11 *Ed* 3. *Avowry* 100.

But where the Plaintiff pleads Confirmation of the anceſtor of the Defendant to his anceſtor to hold by leſſe ſervices, the Defendant may ſay, that he and his anceſtors have been ſeiſed *&c.* without that he had any ſuch anceſtor, 16 *Ed.*3. *Avowry* 93. 8 *Ed.*3. *fol. Avowry* 154. *&* 26 *Ed.*3. *Avowry* 246. without that, that he hath his eſtate, 30 *H.* 6. *Avowry* 20. and it is a good eſtoppell for the plaintiff, that the anceſtor of the Defendant did give to his anceſtor in tail by deed, 17 *Ed.*3. *fol. Avowry* 96. 7 *Ed.*4. *fol. Avowry* 34. 32 *Ed.* 3. *Avowry* 114. *Fitzh.* ſaith, *fol.* 163. that the Feoffee of the Tenant ſhall eſtoppe the Lord or his heir, by the deed of the Lord.

A Prior may avow for relief againſt the deed of his predeceſſor, to hold by leſſe ſervice &c. for all ſervices for relief is incident to Soccage, & 13 *Ed.*3. *fol Avowry* 99.

Wilby ſaith, that the Lord ſhall be eſtopped by deed held by leſſe ſervices, and that a ſtranger hath pleaded ſuch a deed againſt a ſtranger, or againſt a privy, and privy againſt a privy, or againſt a ſtranger, and well, 32 *Ed.*3. *Avowry* 114. 19 *Ed.* 3. *Avowry* 122. 19 *Ed.*2. *Avowry* 224 agreeing of the deed of him whoſe eſtate the avowant hath to the predeceſſor of the Plaintiff, 39 *H.*6 *fol.*8. and this notwitſtanding ſeiſin alledged after of divers ſervices, 29 *Ed.*3. *Avowry* 122. 6 *Ed.* 2. *Avowry* 210.

Grantee of a Seigniory who had ſeiſin of Homage, was eſtopped afterwards by Confirmation of his grantor in *Frank almoigne*, 31 *Ed.* 1. *Avowry* 244.

Grantee of a Seigniory avowed upon the iſſue in Tail for Homage, where his Tenure was by Fealty onely, and Land-ſeiſin in the anceſtor of the Tenant in Tail &c. the iſſue ſhewed this matter, and avoided the ſeiſin without any deed, proving the tenure of the Donor &c. which he ſhould not have done if he had been Tenant in fee ſimple, without ſhewing the deed, 20 *Ed.*3. *Avowry* 131. &c.

If

If the Tenant hath a deed of a tenure by leſſe ſervices, then he himſelf hath acknowledged in Avowry, he ſhall never avoid the ſurplus, nor ſhall have *injuſte vexes*, but if he acknowledge to hold in Knights ſervice, or hold in Soccage by deed, his heir may avoid it in an aſſiſe againſt the Guardian, but not the ſurpluſage of the ſame nature. *Quare* 46 *Book of Aſſiſe. P.*357. 7 *Ed.*3.*fol.*8. and there it is ſaid, that a ſtranger to the deed ſhall not have a *ne injuſte vexes*, nor a *contra formam feoffamenti*, with this agrees *Fitzherbert fol* 11.*&fol.*163. nor a ſtranger may not plead a deed of eſtoppel againſt a ſtranger, 7 *Ed.*3 *fol.*8.32 *Ed.*3. *Avowry* 114.

At the Common Law the Tenant was bound in Avowry by ſeiſin had, although he had a deed by leſſe ſervice, but had his remedy by a *ne injuſte vexes*, but had it not againſt the grant of the Seigniory: ſo he ſhall not avoid the ſeiſin in Avowry by any thing, untill the ſtatute which gives *contra formam Feoffamenti*, but now *ſeiſin* ſhall be avoided by anſwer if he hath a deed of leſſe ſervices *per Tr.* although a ſtranger to the deed, who conveyeth by a *Que* eſtate, 11 *Ed.* 3. *Avowry* 100. 14 *H.*4. *fol.*2. of a ſtranger, but 10 *Ed.* 3. *fol.* *Avowry* 157. the Tenant which pleaded was privy, and he pleaded againſt the Grant of the Seigniory &c.4 *Ed.*2. *Avowry* 202. 19 *Ed.*3. *Avowry* 122. *vide* 10 *Ed.*3. *Avowry* 155.

Parne ſaid, that remedy is not given by *contra formam Feoffamenti*, nor by anſwer againſt encroachment by the Statute, but where the ſervices are expreſſed in the deed, and in no caſe but for ſuit, of which he may be diſcharged by plea, although not expreſſed in the deed &c. 10 *Ed.*3.*fol.* *Avowry* 157 4 *Ed.*2. *Avowry* 200. 31 *Ed.*3. *Ceſſ.*22.

In like manner the Feoffee ſhall not have a *ne injuſte vexes*, nor *contra formam Feoffamenti*, and therefore without a deed ſhewed he ſhall not avoid the ſeiſin had, nor hath he any remedy, 10 *Ed.*3. *Avowry* 157. 18 *Ed.* 2. *avowry* 217. *Fitzh.* ſaith, that the Feoffee ſhall no way avoid the ſeiſin had by the Feoffor *fol.*11.

Tenant in Tail ſhall have none of theſe two Writs, and therefore may avoid ſeiſin by plea; but there *Wilby* ſaid, that the Tenant in fee ſhall have a *ne injuſte vexes* upon ſeiſin had, where he hath not a deed of the tenure, 20 *Ed.*3. *avowry* 131. and *Fitzh. fol.*10. ſpeaks not of any deed, but if he hath a deed he ſhall avoid the ſeiſin had, 10 *H.*7.*fol.*11.

Contra formam Feoffamenti lieth upon releaſe, Confirmation or grant againſt him that made it, not againſt his Grantee, nor ſhall it be pleaded againſt his Grantee *Quare* 11 *Ed.* 3. *Avowry* 100. *Fitzherbert.* agreeth *fol.* 163. and that it lieth upon Confirmation, 16 *Ed.* 3. *avowry* 93. But it ſeems that the deed may be pleaded againſt the grantee, 11 Ed. 3. &c. and of Confirmation, 16 *H.*3. *avowry* 243. 31 Ed.1. *avowry* 244

Vide L 5 E. 4. 87.

If a man hath not a deed, he ſhall not have this writ, but is put to his writ of ne injuſte vexes. Vid. 14 *h.* 4, 5. *Old N.B.* 104 Fitz. *N.B.* 163 *acc.*

Contra formam Feoffamenti lieth not for ſuit reall, 7 Ed.2. *avowry* 207. but if it be contained in the deed, that he will not have ſuit, it lieth, or it may be avoided by anſwer, 8 Ed.2. *avowry* 212. nor lieth it for relief, nor any other thing incident to the tenure, 4 Ed.2. *avowry* 220.

Lord

Lord and Tenant without deed, the Lord encroacheth and grants the Seigniory, the Tenant attorns. *Quære*, if he have any remedy againſt the Grantee who diſtrains for the encroachment, for if the Tenant had alienned after ſuch encroachment, the Feoffee ſhould not have remedy *per Fitzh. fol.* 11. *vide* 14 H. 4. *by Thirning*

XIV. *Avowry after diſclaimer upon the ſame perſon or his Heir.*

AVowry may well be made upon the ſame perſon who hath diſclaimed before, for the ſame Rent, or he may have an aſſiſe of rent, 26 *H.* 6. *Avowry* 18. But the Law ſeems otherwiſe, and that he may yet have Cuſtomes and ſervices, or right of Ward, becauſe the right of the Seigniory is not gone, but the poſſeſſion by which &c. but by *Shard* and *Wilby*, the Seigniory is gone to all intents, 44 *Ed.* 3. *Diſclaimer* 24. and *Bryan* and *Keble* held, that all actions of right remain as an eſcheat, *Ceſſavit* &c. but no action of the poſſeſſion, as of Raviſhment of Ward &c. 16 *H.* 7. *fol.* 1. 13 H. 7. 17. *acc.*

And it is a good counterplea to the diſclaimer, to ſay that he hath alienned after the taking, or that he is not tenant of the freehold at the time of the diſclaimer &c. *M.* 12. *Ed.* 4 *fol.* *Avowry* 40.

XV. *When Avowry may be made upon the husband and wife, or upon the husband alone for ſervices of the Land of the wife.*

THe Avowry ſhall be made upon the husband and wife, of the right of the Wife for all ſervices, but for homage, and it ſhall be upon the husband alone after iſſue &c. 13 *H* 6. *Avowry* 20.

And Avowry for homage upon the husband alone before iſſue, where they were joint purchaſers was abated, 7 *Ed.* 4. *fol.* 26. 39 *Ed.* 3. *fol.* *Avowry* 62. and upon both for other ſervices, *P.* 29 *Ed.* 3. *Avowry* 250.

Avowry making diſcent of Tenancy to three parceners, for that whereof the one took a husband, and had iſſue, the Avowry ſhall be upon the husband and wife, and the others for homage, and good, notwithſtanding iſſue had, but the iſſue was onely to make the husband and wife privy to the Avowry with the others, 43 *Ed.* 3. *fol.* 13. *Avowry* 70. 44 *Ed.* 3. *fol.* *Avowry* 76. that it is not maintainable upon both for homage before iſſue, and *Danby* ſaid, that after iſſue the husband alone ſhall do homage, before which no Avowry ſhall be, but where the husband and wife do purchaſe jointly, both ſhall do homage, *Avowry* 36. 8 E. 4, 12.

XVI. *What perſons may trauerſe the tenure in Avowry, and where the tenure is traverſable, and where not.*

C. 9 part in Bucknells Caſe, acc. 12. E. 4. 7. Brian. acc.

IF the Lord encroach ſeiſin of ſervices of another nature, the Tenant may avoid it in Avowry by traverſing the tenure, for it is not changed by ſeiſin, 8 *Ed.4.fol. Avowry* 36. 10 *H.* 7. *fol.* 11. 7 *Ed.* 4. *fol.* 27. *Danby* held ſeiſin traverſable, if the Seigniory be by Preſcription, but 26 *H.*8. *fol.*6. agreeth to 8 *Ed.*4. *and* 16 *Ed.*4. *fol.*12. *per Pigot.*

But where the encroachment is of ſervices of the ſame nature, as quantity &c. there it behoves to traverſe the ſeiſin, but in treſpaſſe, reſcous, aſſiſe, Ceſſ. the tenure is traverſable, as well upon the quantity changed, as upon the 12 *Ed.*4. *fol.*7. but note, that in theſe Caſes the Lord avow for Knights ſervice where he held but in Soccage, and ſo of another nature, but if he encroach more Rent, it behoves to traverſe the ſeiſin, or ſue an *injuſte vexes*, 26 *H.*8 *fol.*6. 19 *K.*2. *Wards* 165.

Vide Plo. com 15, 7 *E.*4. 28.

The Lord avows for Knights ſervice and rent, the Tenant may well ſay, that he holds by fealty, and a half penny, without that he holds by Fealty, Homage and Eſcuage &c. becauſe they be of another nature, and there it is ſaid, that he ſhall traverſe the tenure, alſo if the encroachment be of another quality, though of one nature, as if he held by fealty and Rent, and ſuit, Roſe or a Hank is encroached, but more ſuit or more Roſes encroached for one, they make not the tenure traverſable, and if the Lord encroach more Rent, and alſo another ſervice of another nature and quality, there the ſeiſin of the overplus of the Rent may be traverſed, and the tenure of the other ſervice, 20 *Ed.*4 *f.* 17. 30 *H.* 6. *f. Avowry* 19.

If the Lord avow for ſervices of another quality, and alſo for more Rent, and ſuppoſeth it payable at two dayes, where it is payable at one, the plaintiff may traverſe the tenure, and alſo the day ſuppoſed, yet of the ſervices due he ought to alledge tender, or otherwiſe to excuſe himſelf of the non payment, or plead that there is nothing arrear, 21 *Ed.*4. *fol. Avowry* 42.

He which holds by Fealty where the Lord avows for homage, and fealty, he may avoid the encroachment, ſhewing the ſeiſin to be by conſtraint, without traverſing the tenure, 42 *Ed.*3. *fol. Avowry* 67. 20 *Ed.*3. *Avowry* 131.

C. 9 part in caſe of Avowry.

And a ſtranger may not traverſe the ſeiſin, nor the tenure, but a Copyholder may traverſe the tenure, yet he is but Tenant at will, 6 *R.*2. *Avowry* 86.

If the Lord avow upon him that hath diſclaimed before, he may well traverſe the tenure or ſeiſin 26 *H.*6 *fol. Avowry* 18.

Lord, Meſne, and Tenant, the Lord avows upon the Tenant, he ſhews that he holds of the Meſne, and *Martin* thought that he ſhould ſay, that he

he holds not of the avowant immediately; although he be not out of his fee, *alii contra*, 9 *H.6 fol.27. Replevin* 3. So it ſeems in a formedon of Rent ſervice, 11 *H.4.fol.*10.

XVII. *Where a ſtranger to an Avowry, or he which hath nothing* &c *may traverſe ſpeciall matter alledged in it, and where he may demurre thereupon for juſtification, and what Pleas he ſhall plead.*

THe Lord may avow upon him in reverſion for 20s. rent arrear ſuch a time. Leſſee for years may not ſay *Rien arrear*, nor that he was not ever ſeiſed, but ſhall plead tender, 2 *H 6.fol. Avowry* 1.

And in an Avowry upon him in Reverſion, the Termor may not plead the Miſnomer of him in reverſion, but upon joyning in aid both ſhall plead, 34 *H. 6.fol.*46. *Avowry* 24.12 *Ed.*4.*fol.*16.

He in Reverſion dieth his heir being within age, a tenant by the courteſie of the Seigniory ſeiſeth the Ward, and avoweth for Rent upon the matter, as within his fee, the Leſſee may not ſay, *hors de ſon fee*, becauſe he is Lord Paramount, but he may traverſe the atturnement ſuppoſed to be upon the Grant of the reverſion to the anceſtor of the Ward, 38 *H.6.fol. Avowry* 29. So if the Lord grant his Seigniory for years, and yet he may avow, the Tenant may ſay, that he hath a granted &c. for which he hath attorned, for this is a ſpeciall *hors de ſon fee*, 11 *H.4.fol. Avowry* 53.

Where the Avowry is upon the Meſne, the tenant ſhall not plead a releaſe to the Meſne, nor a releaſe made to himſelf of part of the ſervices, but he may well plead a releaſe of all matters to himſelf 38 *Ed.* 3.*fol. Avowry* 11. and a ſtranger may not plead a Releaſe to the Tenant, *ibidem.*

And an Executor where the Avowry is upon the heir may plead *hors de ſon fee*, but he may not plead a releaſe to the Teſtator, becauſe a ſtranger, 34 *Ed.*3. *Avowry* 257. but is ſaid, that a releaſe amounts out of his fee, 14 *H,6. fol.*6. 37 *H.6.fol. Avowry* 28.

Avowry for Fine of alienation of his Lands by cuſtome, the plaintiff being a ſtranger pleaded unity of poſſeſſion in the Lord time out of mind &c. and it was holden that when the Avowry is not made upon any perſon certain, or for a Change or Cuſtome againſt common right, every ſtranger may plead in diſcharge of the tenant, 14 *H.4.fol. Avowry* 602. agreeth for Rent charge, 7 *Ed.*4.*fol.*24.

A ſtranger may well plead, that the tenant put in his beaſts to be taken in diſtreſſe, or that he tendered 22 *H.6.fol.*3.

The Lord ſaid, that *T.* & *S.* were jointenants, *T.* ſurvives and upon avowed upon her, the plaintiff ſaid that *T.* had nothing, but as wife to *S.* who enfeoffed him, and that he had paid, and by that payment he compelled

the Lord to avow upon himſelf as tenant, 41 *Ed* 3. *fol.*26. *Avowry* 65. and the diſſeiſor ſhall compell the Lord to avow upon him, if he hath accepted the ſervices by his hands, 116 *Ed.*3. *Avowry* 9.

5 E. 4. 3. 7 E. 4. 28. But if the Diſſeiſee be plaintiff in a Replevin, the Lord may not avow upon the Diſſeiſor, and he who recovers may compell the Lord to avow upon him 48 *Ed.*3. *fol.*9. *Avowry* 83. and it is there ſaid, that the iſſue in tail may compell the Lord to avow upon him, not upon the diſcontinuee if he be plaintiff: ſo the heir of the feoffee of my Tenant without notice, 2 *Ed.*4. *fol* 6. ſo of a recovery, 41 *Ed.*3. *fol.*26,37 *H.*6. *fol.*33. of tail, 33 *Ed.*3. *Avowry* 255. *&c.*

The feoffee may compell the Lord to avow upon him after the death of the feoffor 34 *H.*6. *fol.*46.

In every caſe where the Tenant is in by courſe of Law, he may compell the Lord to avow upon him without notice, as where the heir of the diſſeiſor is in by diſcent, and he be plaintiff. So of Tenant in Dower by the courteſie &c. 37 *H.*6. *fol.*35. 41 *Ed.*3. *fol.*26. 34 *H.*6. *fol.*47. 20 *H.*6. *fol.* 10 33 *Ed.*3. *Avowry* 255. 7 *Ed* 4. *fol.*26. 48 *Ed* 3 *fol.*9.

If the Lord avow upon a ſtranger, the plaintiff may well ſay, that he upon whom &c. enfeoffed him, and ſo may compell the Lord to avow upon himſelf, but not where the feoffee himſelf is not plaintiff, 41 *Ed.*3. *fol.* 26. *Avowry* 79. and here the plaintiff may ſay over, that of parcell of the ſervices he is not ſeiſed, but then he ought to alledge tender of the reſidue, and notice before, 31 *Ed.*3. *Avowry* 111.

But if the Plaintiff cannot convey from him upon whom the Avowry is made, he hath no remedy, nor the ſtranger upon whom &c. nor ſhall come upon him in aid, 3 *H* 6. *fol.* 49. 34 *Hen.*6. *fol.*46. 1 *Hen.* 4. *fol.* *Avowry* 103. 19 H.8. *fol.*7. *&* 1 H.4. the Plaintiff conveyed from him upon whom the Avowry was made, and alledged the tenure by leſſe ſervice &c. and if after the ſtatute the Tenant maketh a Leaſe for years, and the Lord avow for more ſervices then he ought, the Leſſee ſhewing it ſhall have aid, otherwiſe not, 34 H.6. *fol.*46.

But before the Statute of *Quia emptores*, if the Lord avowed upon a ſtranger, the plaintiffe ſhould have no remedy, but the Meſne upon whom &c. might well have joyned with him, but there it was held, that if the Lord had avowed upon the Meſne Paramount, he ſhould not joyn but with all the Meſnes and *paravaile*, 12 *Ed.* 4. *fol.* 11. 13 *Ed.* 4. *fol.* 6. 15 *Ed.* 3. *Aide* 33. 4 *Ed.* 3. *Avowry* 164.

The Lord avowed upon *Jane* as iſſue in Tail, the plaintiff ſaid that *J.* had a ſiſter *S.* Judgement of the Avowry upon her alone, and could not have the Plea, becauſe a ſtranger, but if he convey the moyety by the feoffment of *S.* it is a good plea, and ſhall compell the Lord to avow upon him, but note that he conveyed from her as tenant in fee, otherwiſe he ſhould not have compelled the Lord to avow upon him, 18 *Ed.*3. *fol.* *Avowry* 98.

A ſtranger

A ſtranger to an Avowry may ſay that the beaſts eſcaped there, and were not levant and couchant, or manuring, 18 *Ed.* 2. *Avowry* 219.

The Avowry upon a ſtranger, the Plaintiffe may not ſay, that the ſtranger holdes not of him, but hee ſhall ſay, that the Land is not holden of him ſo, but of his fee, 37 H.6. *fol.* *Avowry* 28.

The death of the Prayee in aid ſhall not abate the Avowry, 21 H. 6. *fol.* *Avowry* 45.

XVIII. *Where notice is materiall for making Avowry, and what notice is ſufficient, and where it needs not.*

IF my very Tenant alieneth, and dieth before notice, I may not avow upon his heir, for the alienee is my Tenant, but if he had been a diſſeiſee *&c.* I might have avowed upon his heir, 2 *Ed.*4.*fol.*6 *Avowry* 31. 34 H.6.*fol.*51. and if the Feoffee of my Tenant dieth, I may avow upon his heir without notice, 4 H. 6. *fol.*20. for if the Feoffor dieth, be attainted or *Ceſſ.* I ſhall not have the Wardſhip, Eſcheat, nor *Ceſſavit*, 17 *Ed.* 3. *fol.* 64. *Relief*, 3. 34 H. 6.*fol.*51.

But if the Tenant alieneth the whole or part in his life time, I ſhall not change the Avowry without notice, yet the Statute willeth, that he ſhall be attenndant to the Lord, *pro particula*, 8 *Ed.*4. *fol.* *Avowry* 35.

Two joint feoffees, the Lord takes notice of the Tenancy of the one, and needs not give notice of the other, 8 *Ed.*3.*fol.* *Avowry* 36. 10 H. 6.*fol*32.

Avowry upon the Plaintiff, becauſe he holds ſix Cottages and 30 acres of Land, who ſaith, that at the time of the taking one *T.* was Tenant of part. *Wich*, before notice the Lord may avow upon the Feoffor for the whole *&c.* *Finch contra*, where the Feoffor is plaintiff, the Avowry ſhall not be upon him, but onely for his portion &c. but if the Feoffee be plaintiff, the Lord may avow upon the Feoffor for the whole untill notice &c. but not diſtrain the Feoffor, but for his portion, and the Feoffee ſhall give notice, not the feoffor, 47 *Ed.* 3.*fol.*4. *Avowry* 82. *Vide Diviſ* 27. 41 *Ed.*3. *Finch* ſaid, if the Lord hath accepted ſervices of the diſcontinuee, or diſſeiſor, yet if the Tenant in right be plaintiff, he ſhall avow upon him, 48 Ed.3.*fol.*9.*&* 10.

If tenant make a Feoffment of part, the Lord before notice may diſtrein in every part for all the arrearages before due, and after, and if the ſervice be entire, he ſhall avow upon the Feoffee for the

the whole in a Replevin brought by him, for it cannot be ſevered, but ſee that the ſervices due before the Feoffment may be ſevered from ſervices after, although entire. *Quære* what difference between ſervices entire, and ſeverall to this intent, 22 Ed.4. *fol.* 36.

If the tenant alieneth by Fine, yet the Lord ſhall not alter his Avowry untill notice, and the arrrearages tendred, 2 *R.2. Avowry* 85. But the Lord may not avow upon the Feoffor for Homage due before, yet the feoffee ſhall not recover damages, becauſe the taking was lawfull untill notice, 2 *R.2. Avowry* 85. *vide Diviſ.* 12.

If the tenant alieneth in tail, the Donee payeth the ſervices to the Lord, and dies, yet the Lord ſhall not have the Wardſhip nor avow upon the iſſue: but the Donor &c. and if the Tenant aliene by Fine, and taketh it back in tail, and dieth, the Lord ſhall not avow upon the Iſſue in tail, although there were no notice, and his father right tenant &c. but now he in reverſion is tenant to the Lord, and there it is ſaid, that the Fine defeats the privity without notice, 2 *Ed.* 3. *fol. Avowry* 176. 2 *Ed* 4. *fol.* 6. 4 *H.6. fol.* 20. in the Kings caſe he ſhall chooſe his tenant &c.

The Donor ſhall not be compelled to avow upon the diſcontinuance, no notice given nor tendered, otherwiſe it ſeemeth if he hath accepted his ſervices, 2 *Ed.* 2. *Avowry* 181. 20 *Ed.* 6. *fol.* 9 & 10. that may, but is not compellable &c. nor by diſcent to him, 41 *Ed.*3. *fol.* 26, *Avowry*, 65.

Tenant in tail, where the remainder is over in fee diſcontinueth, the Lord need not to avow upon the diſcontinuee by any notice, and after the death of the Donee he ſhall avow upon his Iſſue &c. 20 *H.6. fol.* 10. and he ſhall not be compelled to avow upon the Feoffee, if he averre not that the Feoffor had the Fee, 8 *Ed.* 4. *fol. Avowry* 36. 18 *Ed.* 3. *fol. Avowry* 98. 7 *Ed.* 4 *fol.*26. agrees. *Heydon contra* 5 *Ed.* 4. *fol.*3.

Where Guardian of the heir of the Donor, avowed upon the diſcontinuee, it was held that the Avowry ſhould abate, for the heir is not compellable to avow upon him, and it may be prejudiciall unto him, although he may auow upon him &c. 48 *Ed.* 3. *fol.* 9. *Avowry* 83.

By the death of the Diſſeiſor the Avowry is changed without notice, but not ſo by the death of the diſſeiſee, 2 *Ed.*4. *fol.*6. 37 *H.* 6. *fol.*35. 4 *H.* 6. *fol.*20 But if the diſſeiſee recover againſt the heir of the diſſeiſor, the Avowry is changed again, 37 *H.* 6. *fol.*35.

And upon which tender of the Feoffee, the Lord hath need to take notice, See 20 Ed.3. *Avowry* 125. But if the Lord accept of the ſervices by the hand of the Feoffee, or accept him for his Tenant, he ſhall not diſtrain afterwards for the ſervices due before the Feoffment, otherwiſe it is of a forejudger, for there he is compellable to accept the Tenant in place of the Meſne, and he ſhall pay all arrearages &c. 7 Ed.3. *fol. Avowry* 145.

If

If my Tenant enfeoffe a ſtranger, who dieth, and I accept the Heire for my Tenant, yet I may avow for Arrearages due before; becauſe he is compellable &c. but where there is no need to avow upon him &c. the Arrearages due before are loſt by ſuch acceptance, 4 *Ed.* 3. *Avowry* 163. 7 *Ed.* 4. *fol.* 26.

If the Tenant enfeoff his ſon being of full age, and dieth, the Lord may avow upon him, as feoffee without notice, and ſhall not have reliefe, for a diſcent is notice in Law, 17 *Ed.* 3. *fol.* 64. *Relief* 3. 2 *Ed.* 3. *fol. Relief* 11. 4 *Ed.* 3. *Avowry* 163. *&c.*

The manner of notice is to tender the arrearages at the time of the diſtreſs upon the Land, and if he know not the certainty of them, he may tender a ſum, and be ready to pay, if more &c. 45 *Ed.* 3. *fol. Avowry* 80.

XX. *Where the Avowant may alter the Avowry, and that after exception of the party.*

THe Avowant conveys the Tenancy to the Plaintiff, who pleads jointenancy with his Wife &c. The Avowant ſaith, that notice was not given, and it was held, that it needed not, becauſe he hath taken notice of one, and now he may change the Avowry upon both: and if they plead jointenancy with a third perſon, he may change again upon them all three *& ſic infinite* 8 *Ed.* 4. *fol. Avowry* 36. 7 *Ed.* 4. *fol.* 26.

The Defendant avowes upon the Plaintiff as his very Tenant, if he ſheweth that the Defendant had but an Eſtate for life in the Signiory &c. the Defendant may change the Avowry, but it was by ſufferance of the Plaintiff, 4 *Ed.* 3. *fol. Avowry* 162.

It was held, that after Avowry made, the Defendant may not change it, but *ex gratia curiæ*, and therefore where he hath made a joynt Avowry, and changed it in ſeverall Avowries, he would have it changed again, becauſe it was an exceſſive diſtreſs for one part, *& non potuit* 29 *Ed.* 3. *fol. Avowry* 250 and it was at another time,

The Plaintiff traverſed the Avowry, the Avowant ſaid, that he was ill informed of the matter, and prayed to be received to make a new Avowry, at another time after, and the Attorney of the Plaintiff would not aſſent, for he ſaid, he had no ſuch Warrant, *H.* 33. *Ed.* 3. *Avowry* 255.

XXI. *How*

XXI. *How Avowry ſhall be for charges of Knights of the Parliament, or for any thing which ſhall be levied of any Town or Commonalty.*

AVowry that they of a Town uſed to aſſeſſe a certain ſumm for reparation of their Church, &c. and the Plaintiff was aſſeſſed by his own aſſent to 10 s. and it was held that the uſage ſhall not bind him that aſſented not, becauſe it is againſt Common Right: So of an aſſeſſment, that none of the Town ſhall occupy his Common untill ſuch a time, becauſe a private Commodity; but the Cuſtome by which neighbours aſſeſſe, &c. for making or repayring of a bridge, the walls of the Sea, or the like, it ſhall bind others without their aſſent, becauſe it is for the Common weale by *Finch*, 44 *Ed.* 3. *fol.* 19 *Avowry* 72. but theſe Laws ſhall not bind any ſtranger, 21 *H.* 7. *fol.* 40. But the abſence of one reſiant in a Leet, or of one Commoner in a Town, ſhall not defeat an order which is made by the common aſſent, 8 *Ed.* 2. *Aſſiſe* 413.

A *Scire facias* comes to the Sheriff to levy the expences of the Knights, *&c.* he may diſtrain the goods of any in the Town, for the whole Town, if he take them within the Town, becauſe it concerneth the King, but it is a good plea that this Town hath not uſed to pay, *&c.* time out of mind, *&c.* 11 *H.* 4 *fol.* 2. *Avowry* 52. 8 *R.* 2 *Avowry* 260. agreeing to 13 *H.* 4. But there it is ſayd, That it is the fault of the Town if they will not aſſemble before, and aſſeſſe every man *&c.* if proceſs or commiſſion come to levy, *&c.* *Avowry* 156. and the Bayliff may juſtifie without the Sheriffs Warrant, and without ſhewing what was done in the Parliament, 8 *R.* 2. *Avowry.* 260.

And note, That this Writ is, *Levari & appreciari facias*, So that he may ſell the Diſtreſſe, and deliver the money to the Knights, 10 *H.* 4. *fol.* *Gage Deliverance* 23.

It is ſayd, That the Lands of Lords which are ancient Baronies, are not charged to the expences; but Lands purchaſed by the Baron ſtand charged as before: Alſo it ſeemeth, If another man purchaſeth the Land of an ancient Barony, that it ſhall be charged in his hand, *Quere*, 11 *H.* 4 *fol.* 2. *Avowry* 52.

A Copy-holder ſhall alſo pay to the expences of Knights, *Quere* if the Lord himſelf be a Baron or Knight of the Parliament, 10 *H.* 4. *fol.* *Gage Deliverance* 23. Avowry upon a Town or Commonalty.

XXII. *Avowry*

XXII. Avowry for Amerciament or ſuit in a Leet, Hundred, Sheriffes turn or other Court.

A Lord of a Hundred, who hath uſed to have a Law day and Leet, and dozeners to preſent there, may amerce them for not appearing, and diſtrain for the amerciament, the beaſts of the party in any place within the precinct &c. 11 *H.*4.*fol.* *Avowry* 57. *vi. C* 11.*part in Godfries Caſe.*

Avowry for ſuit to a hundred, from three weeks to three weeks, time out of mind &c. and layes the ſeiſin by the hand of a Tenant of the Land and houſe, it is no anſwer for the plaintiff to ſay, that the Land and houſe were in divers hands, unleſſe he alledgeth that both or the one, *ſcil.* the Land is not charged of the ſuit, and then, it is no plea without traverſing the ſeiſin alledged in *A.* or ſhewing, that the ſuit was for the houſe *per Trew*, but if the Avowry were for ſuit ſervice, it is ſufficient to alledge a ſeverall tenure to abate the Avowry, but it ſeems the plea is good to avoid the Avowry, for he hath deſtroyed the ſeiſin by ſpeciall matter, and *ex aſſenſu* iſſue was taken upon the ſeiſin by the hands of the Tenants of the houſe and Lands, 11 *Ed.*3.*Avowry* 101.

It hath been ſaid, that ſuit to a Hundred is no ſervice, 13 *Ed.*3.*Avowry* 120. and therefore in the Caſe before 11 *Ed.* 3. he may not lay the ſeiſin by the hands of *A.* as by the hands of his Tenant, whereas agrees 7 *Ed.*3. and there he layed the ſeiſin in *S.* and his anceſtors, who enfeoffed the plaintiff, and ſpeaks not of the Eſtate of *S.* but it is good, and it ſhall be intended to be fee, *Avowry* 144. but a ſuit to a Hundred may be a ſervice, *per Fitzh. fol* 137. 4 *Ed.*3.*fol* 42.*Meſne* 42. *Vide Fitz. N. B.* 137. *a.* 4 *E.* 34. 11 *b. ſuit* 18. *A man may have a Writ of Meſne to acquit him of ſuit to a Hundred.*

A Bailiff of a Court Baron may avow a diſtreſſe taken for the default of the plaintiff to the attachment in a plaint of treſpaſſe againſt him &c. and the iſſue was if the diſtreſſe were for malice and procurement, and note, that he may avow by commandement of the Steward, *M.*41 *Ed.*3. *fol.* *Avowry* 78.

If it be preſented that one came not to the Leet, the amerciament ſhall be offered by the dozeners who preſented it, and then he may avow, 48 *Ed.*3. *fol* *Avowry* 80. *C* 11. *part Godfries caſe &c.*

One was amerced for brewing Ale, and ſelling it contrary to the aſſiſe within the Hundred, and it was holden, that although he were reſiant within another Leet, yet the amerciament is good where it is made &c. So if one ſell bread and Ale contrary to the aſſiſe in my market being in another Leet, then where he brewed it, and wherefore he traverſed the brewing and ſelling it contrary to the aſſiſe, 13 *Ed* 3.*Avowry* 105.

If the King grant me a Leet of all the Reſiants for life or otherwiſe, and after he grants unto another a view, and Leet of any of my Reſiants, the Tenants are not bound to come to his Leet, and though he be ſeiſed of their ſuit &c. yet they ſhall avoid it in Avowry by the ſpeciall matter, for

he could not have a *Quo warranto*, and I may well diſtrain them for their ſuit, and need not ſue a *ſcire facias* to repeal the other patent; ſo at their perill &c. by which it appears that they are not bound to come to two Leets, 32 *Ed.*3. *Alowry* 112. But ſee that ſeiſin binds in the Reſiants in Avowry if they ought of right to come to another Leet, 10 *Ed.*3.*fol.*8. *Avowry* 155. & 4 *Ed.*3.*fol.*31. it is held, that ſeiſin of them ſhall bind in the one Caſe and the other, *vide Fitzh. fol.*161. that none is bound to come to another Leet, but onely there where he is Reſiant, but ſhall have an *exoneraco. Secta.*

A Felon waves the goods within the Leet of him, who hath *Catalla felonum & fugitorum*, the owner brings a Replevin, the Lord will avow, 8 *Ed.*3.*fol.* *Avowry* 151. 29 *Ed.*3 *Avowry* 255.

C. 11 *part Godfreys caſe.* 4 *Eliz. Dy.*211. *H.* *The Jurors in a Leet refuſe to preſent the Articles, the ſtipend may impoſe a Fine upon them ſeverally, but a Fine impoſed upon them jointly is not good.*

Doſeners amerced in common in a Hundred for not preſenting &c. It ſhall be affiered ſeverally according to the quantity &c. and the Lord may well avow, but if a town be amerced intire, the afferiment ſhall be alſo in common, becauſe none is named that is amerced there, but the town &c. 10 *Ed.*3. *fol.* *Avowry* 155.

Where two Lords have two Leets in one Town, if if the one make a Purpeſture in the way in a place which is all within the Leet of the other, he may amerce him, and avow, but not if the place where &c. be in common to them, &c. 4 *Ed.fol.*10 *Avowry* 161.

And there it is ſaid, that if my tenant reſiant within my Leet, purchaſeth a Leet of all his Tenants, yet he ſhall come to my Leet, not if he were but reſiant, and not tenant, by ſome. So if he hath a Leet by Preſcription to his Mannor: The opinion of the book is otherwiſe of a reſiant which is not a Tenant and purchaſeth part of the Mannor &c. if he be not alſo Lord of the other Mannor, 4 *Ed.*3.*fol.*10 *Avowry* 161. but he that hath uſed to go to another Leet time out of mind &c. is not bound by his reſiancy, 13 *Ed* 3. *Leet* 7. *Quære*, if he who hath uſed time out of mind &c. to come to two Leets, ſhall be bound &c. and it is held that he ſhall, 4 *Ed.*3.*fol* 31.

A man may ſerve at a Leet, and alſo at the Sheriffes turn, not at two Leets, 18 *H.*6.*fol.*13.

Avowry by the Lord of a Hundred for two Marks yearly of the Hundreders, uſed to be levied by diſtreſſe time out of mind, of the chief Doſoner, who diſtrained the others for contribution, 6 *Ed.* 3.*fol.* *Avowry* 191.

A Feoffee who holds by 1 d. for all ſervices and demands, yet he ſhall ſerve at the Leet of his feoffor in the ſame town, for this is to the perſon and reall, not ſervice, *M.*7. *Ed.*2. *Avowry* 211. but if it were alſo for all ſuits &c, he ſhall be diſcharged &c. *P.*8 *Ed.*2. *Avowry* 212. *Vide* a feoffment to hold by 6 d. for all ſervices, & *ex eo ſolvat ſcutagium* 31 *Aſſ. P.*30.

One claims by Preſcription to have amerciaments of all his Tenants, in

in the County of *S.* in the Court of the King, and of others, and alledgeth that the Plaintiff was amerced in the Hundred, and that he took the Eſtreats and Diſtreſſes, and it was held that he ſhould not avow, becauſe he did not preſcribe in the Diſtreſſe. But a Bailiff of a Court where the Amerciament was levied and delivered unto him may avow the Diſtreſſe in every place within the Precinct this notwithſtanding, *M.* 19. *E.* 2. *Avowry* 225. So for Amerciaments in a Leet, the Bayliff may avow in the high ſtreet, 34 *Ed.* 1. *Avowry* 232.

vi. *C.* 8 *part in* Greslies *caſe that the Lord may diſtrain for a fine, or amerciament in a Leet, and ſhal not be put by by an action of Debt, for every ſuch ſmall thing but* vide. 15 *Eliz.* Dyer 322 44. *E.* 3. 13, *C.* 11. *part in Godfreyes caſe, That for an Amerciament in Court Baron, the Lord counted upon without a preſcription.*

It was preſented at the Sheriffs Turn, that a Prior had not repaired a Cauſey which he ought, &c. and the Bayliff avowed for the amerciament and the preſentment was held void, if the Cauſey were within another Leet, For the Sheriff may not meddle with Annuſans within another mans Franchiſe, unleſſe by Writ, *&c.* and the Plaintiff recovered Damages, &c. 26 *Ed.* 3. *fol.* *Avowry* 247.

A Bailiff diſtrained for an Amerciament of ſuit at a Court Baron which is ſuit ſervice, 21 *H.* 6. *fol.* *Replevin* 7. Debt for an Amerciament in a Leet, 10 *H.* 6. *fol.* 7.

Note that where a man hath ſeiſin of ſuit at his Leet, the Tenant ſhall traverſe that alone, but not the Right which is not traverſable, but only in a *Quo warranto*, 11 *H.* 4. *fol.* *Avowry* 57. And ſeiſin of a Hundred, is ſufficient Title in an Avowry, 4 *Ed.* 3. *fol.* *Avowry* 161. 8 *Ed.* 3. *fol.* *Avowry* 151. 10 *Ed.* 3. *fol.* *Avowry* 155. But if the Tenant of right ought to ſerve at another Court, he may avoid the ſeiſin by the ſpeciall matter, 32 *Ed.* 3. *Avowry* 112. *Quere*, for the Plaintiff was nonſuit there.

15 *Eliz.* Dyer, *it is not good plea without preſcripton to diſtrain.*

It was holden, That every man ſhall do ſuit at a Leet that ſhall be within it. as well the Servant as the Maſter, by his reſiancy, 2 *H.* 4. *fo.* 16. *Leet* 5. 18 *Hen.* 6 *fol.* 12. Feoffee to hold quit of all demands, and view, yet he ſhall do ſuit at the Leet of the Feoffor, *&c.* for he ſhall not be out of the Law, 7 *Ed.* 2. *Avowry* 211. *vide*, of this above, *Q.*

XXIII. *Where Avowry ſhall be made for ſuit of a Mill, and where he ſhall do ſuit, where not.*

AVowry, ſuppoſing that the Plaintiff was to do ſuit to his Mill, to ſtay there two dayes, and if then he be not ſerved, that he may grind where he will, and it was to grinde all the Corn which ſhould be ſpent in ſuch a houſe, and good, 16 *Edw.* 3. *Avowry* 99. *Trew* ſayd, that ſince to grind all the Corn growing upon ſuch a Land is not ſervice, becauſe the Meſne cannot do it; 8 *Ed. fol.* *Avowry* 153. 9 *Booke of Aſſiſe, P.* 24. It is ſervice, *vide* 18 *Ed.* 2. *Double Plea* 11. *Temp. Ed.* 1. *voucher*, 296.

The Lord enfeoffs *A.* of part to hold by ſuit to his mill, and after enfeoffs another

another of the whole Mannor, rendring 10 l. for the Mannor and 5 l. for moulture, this is one rent, and one intre avowry ſhall be, 9 *Aſſ. P.* 24. *Avowry* 176. 9 *Ed.* 3. *hors de ſon fee, vide* of a Leaſe of wood and Land rendring 10 s. for the Wood, and 10 s. for the Land, 17 *lib. Aſſ. P.* 10.

Herle ſaid, that *Secta ad molendinum* lieth not without tenure, nor of the corn growing out of the Land to be ſpent in it, and in an aſſiſe brought the houſe ſhall not be put in view, becauſe it is not parcell nor appendant, 19 *Ed.* 2. *Aſſiſe* 390. but of the Corn growing within the Land, Signiory or Town, the Writ lieth without a tenure, not of corn bought, 29 *Ed.* 3. *Aſſ.* 365. and it lieth by preſcription alone, or by tenure, 22 *H.* 6. *fol.* *Action upon the Caſe* 11. and *Herle* ſaid, if the Lord ſell his will with the ſuit of his neighbours and Tenants, and the vendee is ſeiſed of their ſuit, the vendor dieth, and his heir made another will, and had the ſuit again, 19 *Ed.* 2. *Aſſ.* 399. Suit appendant paſſeth with the will to which &c. 17 *Ed.* 3. *fol.* *Hors de ſon fee* 22. *vide Diviſ.* 33.

Two Lordſhips in one Town, the one hath had a Mill time out of mind &c. and ſuit of all the Reſiants &c. yet the other, or any man may build a Mill there upon his own Land, and no remedy for the firſt againſt the new Miller for taking away the ſuit of his Tenants, but he hath remedy againſt the Tenants by *Secta ad molendinum* or diſtreſſe, and note, that Reſiancy doth not give ſuit to a Mill without Tenure or Preſcription, 22 *H.* 6. *fol.* 14. *Action upon the Caſe* 11.

The Defendant after the view pleaded *hors de ſon fee*, Judgement, if without title, and good, becauſe it is againſt common right, but if he claim it as appendant, he ſhall not make other Title, but he may, if he claim in groſſe, 17 *Ed.* 3. *fol.* *hors de ſon fee* 22.

Feoffee to hold by 2 s. for all ſervices, he ſhall not do ſuit to the Mill, yet it is not ſervice, becauſe the Statute willeth, that nothing ſhall be demanded, which is not contained in the deed, 18 *Ed.* 2. *Double Plea* 11. *vide P.* 8. *Ed.* 2. *Avowry* 212. *Diviſ.* 22. *G.*

In this Writ of *Secta ad molendinum* in *debet* and *ſolet* after view and title made, the Tenant Leſſee for life, had aid of him in Reverſion, 17 *Ed.* 3. *fol.* *Counterplea of aid* 3.

In ſuit *&c.* in *debet*, he layed the ſeiſin *ut de feodo & jure*, *Ed.* 1. *Avowry* 296. and it was *de bladis creſcentibus.*

XXIV. *Avowry for aid to make his ſonne Knight or to marry his daughter.*

AId to make the Kings ſon Knight, or to marry his eldeſt daughter, Tenant by Grand Serjeanty ſhall not pay, nor none but Tenants in

in Knights ſervice and Soccage, for the Statute ſpeaks of them onely, and petty Serjeanty ſhall not pay it, 1 *H.*4. *fol.* 32. *Bar* 181. 10 *H.* 6. *fol.* *ancient demeſne.*

It ſeems that the daughter ought to be paſt 15 years of age, before Avowry for this aid, and a Releaſe of all ſervices and demands extinguiſheth this aid, becauſe it is a ſervice, 40 *Ed.*3. *fol.*22. & 47. as *Pigot* reporteth. But the books ſeem that they are not extinct, if there be any part of the firſt tenure remaining, becauſe they are not ſervices, but incident to Socage and Knights ſervice &c. *Lege.*

If a man hold by homage fealty and rent, and releaſe the fealty it ſeems void, and ſo of aid, becauſe it is incident.

It ſeems the aid ſhall be granted onely for the marriage of the eldeſt daughter, a Count in debt againſt the heir, and if the father hath levied the aid, and die before the marriage, ſhe ſhall have action of debt againſt the Executor, and upon their not ſufficiency againſt the heir, and it is a good Barre that it was not levied in the life time of his father, 3 *Ed.*3. *Itin. debt* 157. *Fitzh.* agrees, that it ſhall be for the eldeſt ſon or daughter, and the Son ſhall be fifteen years of age, and the daughter of ſeven *per Weſt.* 1 *Ca.* 35. *Fitz. fol.*122. & *fol.* 82. and there is a Writ to the Sheriff to levy it for the Lord, and he that holdeth by one Knights fee ſhall pay 20 s. and ſo *pro rata*, and he that holds in Socage to the value of 20 s. ſhall pay 20 s. *Weſt* 1. *cap.*35. So for the King, *Anno* 25 *Ed.* 3. *c.* 10. Before which Statute the King diſtrained for what ſum he would, and aid ſhall be for the younger ſon or daughter, if the elder dieth before &c. So it is ſufficient if that he be heir apparent, though the Statute ſpeak *de primogenito.*

Vide 7 *E.*4. 11. 12 *E.*4 3. 6. 33 *h.*6. 35. *to this.*

Fitz. N. B. 82. *G. acc.*

And *Fitzh.* ſaith, if the daughter be married, and the ſon made Knight after the ſumme levied, and before payment made to them by the father, they haue not any action of debt againſt the Executor, nor againſt the heir, which he ſhall if he be not married &c. *fol.*83. 3 *Ed.*3. *B.*

Vide Com. 268 *Ratliffes caſe.* *C.*6 *part Sr. Drue Druries Caſe acc.*

XXV. *Avowry for exceſſive diſtreſſes, and what ſhall be ſaid to be an exceſſive diſtreſſe*, per Marleburge cap. 9.

A Man avowed the taking of 60 ſheep for 2 s. rent, and of 15 oxen for 10 s. rent, and he was amerced for the exceſſive diſtreſſe, but the Avowry abated not, 41 *Ed* 3 *fol.* *Avowry* 65. *Diſtreſſe* 13. and of ſix ſheep for 3 d. and for the exceſſive diſtreſſe recovered damages preſently, 11 *Ri.*2 *Avowry* 87

Avowry for Homage, the plaintiff ſaid, that he held by fealty onely, and as to the Homage that he had ſeiſin by exceſſive diſtreſſes during his nonage &c. the other ſaid, that it is holden by Homage, and as to the exceſſive diſtreſs for homage demurred in Law, *Finch* 42 *Ed.*3 *f.*26. *Avowry* 67. Avowry good upon a diſtreſſe taken in the high way, as for beaſts of the Plow, & the other was put to his action upon the Statute, 11 *R.*2. *Avowry* 87. 4 *H.*6. *fol.*2.

The

The taking of ten ſheep for one pair of gloves is exceſſive, but for homage or fealty he may avow the taking of twenty ſheep, becauſe for them it cannot be exceſſive, 29 *Ed.*3.*fol. Avowry* 250.27 *lib. Aſſ. P.* 51. *Quere* of ſuit and eſcuage, and it ſeems there it may be exceſſive, and often diſtraining, nont of homage, *vide* if it be clear for fealty, 28 *lib. Aſſ P.* 50.

Vide Br. Diſtreſſe 88 22 *E.*4 50 *acc.*

A Cart with four horſes loaden with grain taken for 2 s. is exceſſive, but if it appear that he could not ſever them, (as one fold of ſheep which will not be ſevered) as if the horſes were tied to the Cart, it ſeems by *Bryan* that it is not exceſſive Diſtreſſe, *Ed.*4.*fol.* 3.

XXVI *Where Avowry may be for Contribution upon Tenant in Dower, of Coparceners or other, and where and how contribution may be made or demanded,* Marlebr. *cap.* 9.

TEnant in tail dieth without iſſue, his wife recovers Dower againſt the donor, and diſtrains him for the third part of the ſervices, and good, 10 *Ed.* 3. *fol. Avowry* 159. 3 *Ed.* 3.*fol. Avowry* 173,34 *lib. Aſſ.P.*15.44 *Ed.*3 *fol.*32. So when the Tenancy eſcheats *&c.* But if the Lord purchaſeth the Tenancy, no Contribution ſhall be made 23 *Ed* 3. *Dower* 130. *Perkins fol.*83. And by him there the wife ſhall not be attendant to the heir to whom the Meſne hath releaſed, becauſe in of the Lord by the purchaſe.

If the Father holdeth of the Son and dieth, and he endoweth his mother, yet he may diſtrain for the third part of the ſervices &c.34 *l. Aſ.P.*15.

If the Meſne holdeth by 3 d. and the Tenant of him by 3 s. and the Tenant forejudgeth the Meſne, yet his wife ſhall be endowed of the Meſnalty, and ſhall not be attendant to any, *Perkins fol.*84. but *vide* 22 *Ed.* 3 *fol.* that ſhe ſhall be attendant to the Tenant *paravail &c.*

If the Lord preſcribes to have two Marcks of the Reſiants, and to diſtrain the chief doſoner, he may diſtrain the other for Contribution, and good, 6 *Ed.*3.*fol. Avowry* 191.*&c.*

One brings a *Contribuac fac.* as a parcener, the Defendant ſaid, that his Father died ſeiſed, and held without Contribution, and prayed his age and had it not, 4 *Ed.*2. *Age* 136.

If Land out of which ſuit is due diſcend to divers parceners, the eldeſt onely ſhall do the ſuit, and the others ſhall contribute, but if the Lord purchaſe part of the Land out of which the ſuit is *&c.* all the Suit is gone, as Grantee of a Rent charge, or Tenant by Statute purchaſeth, parteth. *Watſon* alledgeth the reaſon, becauſe Contribution lieth not againſt himſelf who purchaſeth *&c.* 34 *lib. A P.* 15.

The Lord brought a *Sella fac.* to a Hundred, againſt two parceners, who ſaid, that they had another ſiſter within age, not named, and prayed that

that the Plea might be ſtayed: The plaintiff ſhewed that Partition was made between them, ſo that every one ſhall do ſuit and other ſervices for her ſelf, this was holden a good plea, wherefore he traverſed the tenure by ſuit, 24 *H.* 3. *Partition* 19

If the eldeſt daughter doth the ſervices to the Lord, ſhe ſhall have contribution of the younger parceners, 10 *H.* 4 *Droit* 64

XXVII. *When and how Homage and Fealty ſhall be done, and who ſhall be compelled to take it.*

OF the manner of doing Homage by Husband and Wife, See *Littleton in Homage lib.* 2. *&* 15 *Ed.* 3. *Avowry* 109. and it is ſaid, that the Husband and Wife ſhall doe Fealty, but the Husband onely ſhall do Homage, for ſhe ſhall not go to the war with her Lord, 13 *Ed.* 1. *Avowry* 234. but ſee that they both do *Homage* jointly to the King, 46 *Ed.* 3 *fol.* 11. *Eſtoppel* 205. *Littleton* ſaith in his chapter of Homage, that Tenant by the Courteſie ſhall not do homage.

Vide C. 6. *part* 57. *Homage done by the husband before iſſue ſhall not bind the wife.* 43 *E.* 3. 19 *Avowry upon husband and wife for homage after iſſue.*

The Lord in right of his Wife ſhall not take Homage without his wife, 2 *Ed* 2. *Avowry* 183. *&c.*

Fealty due to two parceners may well be done to the one of them, and therefore it is no plea for the Tenant where the one demands it, to ſay that he will do it to them all together, and this may be done to the Bailiff or Attorney, and the Tenant ought at all times to be ready upon demand, 3 *Ed.* 2. *Avowry* 287.

Vid, 7 *Ed.* 4. 27 39 *E.* 3. 15. *avowry upon the husband onely. Vide* Fitz. *N.B.* 257 *f.* 43 *E.* 3. 13. *acc.* 11 *h.* 4. 29 *Thirn.* *and* 7 *E* 4 29 *Moyle.*

But if Homage be due to three parceners, the taking thereof, and the profit ſhall be to all in common, 12 *Ed.* 3. *Avowry* 236.

In Avowry for Homage it is not ſufficient to be ready in the Court, if he were not ready in the countrey, for then the Lord ſhall have return, but in Cuſtomes and ſervices Homage may be well done in Court, 7 *Ed.* 3. *fol. Avowry* 146. but fealty hath been in Court in Avowry, 3 *Ed.* 2. *Avowry* 187.

Tenant by the Courteſie ſhall do homage, but that is contrary to Littleton, & the book at large doth not warrant it.

If the Tenant do tender homage before diſtreſſe taken, the Lord ſhall not diſtrein again without new requeſt 20 *Ed.* 3 *Avowry* 123. ſo of Fealty, 21 *Ed.* 4. *Avowry* 42. See *Diviſ.* 2.

If Land holden by Homage diſcend to many parceners, and the one purchaſeth the Seigniory, now the Homage is gone, for ſhe alſo ought to do it, and ſhe is diſcharged thereby &c. but for other ſeveral ſervices ſhe may avow for the portion, 8 *Ed* 3. *fol.* 65. *Avowry* 152.

If three parceners hold by homage, it being done by the eldeſt, it ſhall ſerve for all, but if after ſhe alieneth her part to a ſtranger, the others ſhall do another homage, for the firſt is determined, 2 *Ed.* 2. *Avowry*, 179. *Stamford Prerogative cap* 5.

Tenant for life ſhall not have Homage nor do Homage, 3 *Ed.* 3. *Itin.*

Avowry

Avowry 175. otherwiſe it is of Fealty 22 *Ed.*3. *fol.* 18. *Wards* 44. and though he did homage, he ſhall not have it by a writ of the Meſne, for his eſtate is not amended, 13 *Ed.*3. *Meſne* 12.

A Parſon ſhall not have homage, but a Biſhop ſhall have it, *Ed.* 1. *Juris utrum* 13.

An Avowry upon the Feoffor is not good in a Replevin by the Feoffee, who was alſo Tenant at the time of the taking, 41 Ed.3. *Avowry* 79. but he ſhall not render damages where he had not notice, 2 *R.* 2. *Avowry* 85.

The Tenant who hath done homage to the Grantor, ſhall not do it to his Grantee, but fealty &c. he ſhall do, and homage after the death of the Grantor, but this ſeemeth to be homage anceſtrell, for there it is ſaid, that the Tenant ſhall be warranted, for it cannot be homage anceſtrell to the Grantee, 13 Ed.1. *Warranty* 91. and *per quæ ſervitia* 23. where it ſaid, that Tenant by homage anceſtrell need not attorn untill acquitall be granted unto him &c. *Homagio capiendo*, of Homage anceſtrell, the Lord ſaid, that before the Writ he hath granted the Lordſhip to *T.* and held a good plea, 47 *H.* 3. *Waranty* 99. and this Writ lieth not but for Homage anceſtrell, which draweth warranty and acquitall 45 Ed. 3. *Barre* 212.

20 E.3 per quæ ſervitia 24 *br. fealty* 19. *an Infant did fealty.*

An Infant which holdeth by Homage alieneth, the Grantee of the Seigniory brings *per quæ ſervitia* againſt both, and moves that both may do Homage, and at laſt it was holden that the feoffor onely ſhould do fealty, and no more, becauſe alſo within age, *ſcil.* of three years, 32 Ed. 3. *per quæ ſervitia* 9.

Lands holden by Eſcuage was rendred by Fine for life, the remainder to *T.* to hold by Eſcuage, it was holden that Tenant for life ſhall not do one Eſcuage and *T.* another, becauſe one Tenant, ſo they ſhall not do ſeverall ſervices, as the one Socage, the other Knights ſervice, and ſee the Fine recited, that tenant for life ſhould do Eſcuage, and yet he ſhall not do Homage &c. 19 Ed 3 *Fines* 71.

XXVIII. *Where acceptance of Homage may be a Barre.*

Vide 14 *Aſſ.* *br. Aſſiſe* 192. *Plo. Com.* 133. 33 E.3. *Gard.* 11 *acc.*. *F.N.B.* 142.

THe Tenant enfeoffeth his eldeſt ſon by Colluſion, and the Lord doth accept homage of him, the father dieth, the ſon ſhall not be in ward, nor no advantage to the Lord of the Colluſion 32 *Ed.* 3. *Wards.*

See the contrary, 33 *H.*6. *fol.* 16. becauſe he was compelled to accept the homage living the feoffor, ſo he is not eſtopped, but ſhall be eſtopped by acceptance after his death, but *vide* it ſaid *contra* to this, 31 *Ed.* 1. *Wards* 155 becauſe by *Magna Charta* he ſhall not have the Wardſhip, untill he hath accepted his homage.

If

If the diſſeiſee accept homage of the diſſeiſor, it is a Barre of his Aſſ. but his heir may have a Writ of Entry, 17 *Ed.*3. *fol.*6. 22 *lib. Aſſ.P.*6. 17 *Aſſ.P.*3. *Aſſ.*208 *Temp. Ed* 1, *Aſſ.* 423.

If the Lord accept homage of the heir, he ſhall not avow after for relief, 15 *Ed.*3. *relief* 5.

If a man hath three daughters, and the middle daughter doth purchaſe Land, and doth homage to her eldeſt brother, who hath the Seigniory, and dieth without iſſue, the youngeſt ſon ſhall have the Land, and not the elder for the acceptance, but if the younger die without heir, he ſhall have it an eſcheat, and note that the acceptance concludes himſelf, not his heir 13 *Ed.*1. *Avowry* 235. *Bracton* agreeth, *Homagium expellit dominicum Stamford prerogative cap.*

4 E 3. 4 7 E.3 4.29. 29 h.8 b. *Avowry* 111. *by acceptance of Rent and ſervices by the hands of the Feoffee, the Lord ſhall not barred of relief.*

An Abbot demanded certain Land, whereof the Tenant diſſeiſſed his predeceſſor, it ſhall not be a barre by acceptance of fealty, yet it ſhall be a barre in a *Juris utrum*, 12 *Ed.* 3. *Bar* 252. *vide* accordingly, but not for the ſucceſſor, 11 *Ed.*3.

Juris utrum 3. but the perſon himſelf was barred by acceptance of the Bailiffe, 12 *Ed* 2. *Juris utrum* 12.

If the Son be attainted living, the Father who afterwards dieth, and the Lord brings a Writ of Eſcheat, it ſhall be a good bar, if he hath accepted his fealty after the death of his father, 31 *Ed.*1. *Diſcent* 17. but 11 *Ed.*3. *Eſcheat* 13. is, that no acceptance of ſervice ſhall barre the Lord of his Eſcheat, if he have not accepted homage &c.

A woman barred of Dower by acceptance of homage, of Land purchaſed by her husband, and her ſelf jointly in tail, 11 *Ed.* 3. *Dower* 63.

Note the reaſon is becauſe it is the higheſt ſervice that he can receive, for he cannot receive homage ui de E.1. Juriſdiction 13.

It was found by the Grand aſſiſe in a Writ of right, that the demandant had accepted homage of the Tenant for the ſame Land, whereupon it was awarded that he, and his heirs ſhould be barred *in perpetuum*, 5 *H.*3. *Right* 66.

But ſee 11 *R.*2. *Acceptation of Fealty is no bar in a Writ of Eſcheat by the Lord.*

A *Juris utrum* abated by fealty accepted depending it, *Ed.* 1. *Juris utrum* 13. and there it was ſaid that acceptance of fealty is as ſtrong a bar as of homage, by any who hath ſuch eſtate, for that he cannot have homage as a Parſon &c. and if a Biſhop bring a *ſine aſcenſu capituli*, acceptance of fealty ſhall bar him, yet he may have Homage, *Juris utrum* 13.

Vide 7 E 6. *br. eſcheat* 18. *If the Lord accept rent of the Diſſeiſor, yet he may have a Writ of Eſcheat Contr. if he accept of a perſonal ſervice.*

If the Donor hath been ſeiſed of homage, by the hands of the Tenant in Frank Marriage, he ſhall have Cuſtomes and Services for it afterwards againſt him, 47 *H.* 3. *Right* 52. *Quere Fitzh.* agreeth, *fol.* 151.

XXIX. *What Eſcuage ſhall be ſaid Knights ſervice, and what not.*

ESCuage certain is Soeage, and if uncertain, ſometimes more or leſſe &c. is Knights ſervice, otherwiſe not, 15 *Ed.*2. *Avowry* 215.

Vide Lit. *acc.* 15 *E.*3. *Avowry acc.* 26. *Aſſ. br. Tenures* 18.

A Tenure to pay a farthing or ſpurres, when eſcuage ſhall riſe to 40 s. is not eſcuage, for it is not due if eſcuage riſe not to 4 s. and Knights ſervice it cannot be, becauſe certain, 26 *lib. Aſſ. P.* 66.

Feoffment to hold by ſix pence for all ſervices and eſcuage is ſocage, and a feoffment to hold by 6 d. for all ſervices, *& ex illis quod ſolum debet ſcutagium quantum pertinet, &c.* is ſocage, but if he had ſaid further, *ſalvo forinſeco ſervitio* or *ſalvo regali eſcuagio*, when it riſeth to 40 s. and when to more more, and when to leſſe leſſe, this is Knights ſervice, becauſe Knights ſervice is expreſſed 31 *lib. Aſſiſ. P.* 39. and 27 *lib. Aſſ. p.* 52.

Eſcuage is a ſervice of arms between *England* and *Scotland*, and Caſtel guard, is Knights ſervice, although it be within the Realm and it is eſcuage, ſo is grand Serjeanty, 19 *Ri.*2. *Wards* 165. *Plowd. Com.* 126. *b* it ſhall be paid when the King goes into *Wales*, ſee *old Tenures acc.* 116. ſee *Doderidge* in his book of the Principality of *Wales*. The Kings of *England* to ſuppreſs the diſorders and rebellions of the Welſhmen invented *Scutagium*, which was to levy aid of their ſubjects *per Servitia Militare*, to ſuppreſſe them *tanquam rebelles, non hoſtes*. Note, upon that book it may be collected that every man who holds of the King by his ſervice, is bound to go to war with the King or his Lieutenant, againſt the Scots or Welſh, and ſo it was required 16 *Car.* by the King in his Warres againſt the Scots, and if the Scots rebell againſt the King of *England*, he being King of both Kingdomes, it ſeems by the opinion of *Littleton* 20. that they ought to go with the King by 40 dayes at their own charges, but to forreign war the ſubjects are not bound to go with the King, or to attend him without wages, but note *Egertons* book of *Poſt-nati*, 8. by Proclamation the 20th of *October*, 1604. 2. *Jacobi*, it is recited *in hac verba*. We have received by thoſe ſkilfull in the Laws, that immediately upon our ſucceſſion divers of our ancient Laws are expired, as namely that of eſcuage, and the Naturalization of Subjects.

Tenure by Rent, and 10 d. for eſcuage be it more or leſſe, is ſocage *in capite*, and if the King ſeiſe Land holden of another by ſuch ſervices, he ſhall have an ouſtre le main *cum exitibus*, 5 *Ed.*3. *fol.* 6. *Quare impedit.* 34.

There is Lord Meſne and Tenant in Knights ſervice, the Tenant goeth into *Scotland* with the King, by this the Meſne is diſcharged of eſcuage, and there it is ſaid, that the Lord may drive a diſtreſſe out of the County for eſcuage, 6 *H.*3. *Avowry* 242.

Of apporcionment of this ſervice &c. *vide Littleton lib.* 2 *cap.*

and

and *Herle* ſaid, that a man ſhall not pay eſcuage, nor ſhall go in arms for it, but where the King goes in his own perſon, and if he plead, that he went not with the King into *Scotland*, yet he ſhall maintain it by this that he ſerved him elſewhere &c. 7 Ed. 3. *fol.* 29.

21 E. 4. 17. F. N. B. 83. *if the King's Tenant goeth with the King or his Lieutenant or his Deputy then the Conſtable of the Hoſt ought to certifie the ſame in the Chancery, by the Treaſurer or Barons of the Exchequer, and then the Kings Lieutenant ſhall have eſcuage of his Tenant.*

XXX. *Tenure in Frankalmoigne how it may be done, and how it may be changed.*

THE Lord paramount confirmeth to the Tenant to hold in frankalmoigne, the Meſne dieth without heir, the Lord grants the ſervices to a ſtranger, the Grantee is eſtopped to avow for homage by the Confirmation &c. 31 Ed. 3. *Avowry* 244. if the Tenant grant to hold of the chief Lord, and the Lord confirms it to hold in Frankalmoigne, it is good, 4 Ed. 3. *fol.* 19. 3 Ed. 2. *Meſne* 46. but ſee 5 Ed. 32. *Meſne* 64. where it ſeems that is not Frankalmoigne in the firſt caſe of the 31 Ed. &c. Frankalmoigne by confirmation to the Abbots Tenant befor the Statute of *Quia emptores terrarum*, 33 *H.* 6 *fol.* 22 15. Ed. 3. *Confirmation* 8. and the Writ *de Meſne* lieth between them thereupon, and if the ſervices of Frankalmoigne be regardant to a Mannor, he which hath the Mannor ſhall have them alſo *ibidem*, and ſee where an honor of which the Mannor of *Spalding* was held in Frankalmoigne, was given to the King with all the advantages as the donor had it, and the King had alſo the Frankalmoigne, 7 Ed. 4. *f.* 11.

4 E 3 *br. Tenures* 60. *Lord, Meſne and Tenant Abbot, if the Lord releaſe the Abbot or confirm in Frankalmoigne, the Menalty is extinct.*

The Templers held of the King in Frankalmoigne, and were diſſolved by Parliament, and their Lands given to the Hoſpitlers of S. *John* to hold by the ſame ſervices &c. the ancient Frankalmoigne is not revived, and a new one cannot be without expreſſe words, for they ſhall not do certain ſervices &c. yet here is a Seigniory, 35 *H.* 6. *fol.* 57. aid of the King, 28. 7 *Ed.* 4. *fol.* 11. 33 *H* 6. *f.* 7.

In Coke 7. *part* 13. *the reaſon of this Caſe is, becauſe at the privity of the tenure on the party of the Tenant doth not continue, and the privity being a perſonal privity, was not conveyed to the Hoſpitlers.*

Thorp ſaid, that Tenant in Frankalmoigne needs not to attorn, becauſe he ſhall not hold of the Grantee by the ſame ſervices, 42 *lib. Aſſ p.* 46. *Travers* 24.

A gift was before the Statute to hold in Frankalmoigne, reſerving rent, and good, and a Writ of Meſne lieth for the rent, and thereof he ſhall be acquitted for owelty, ſo the Reſervation takes away the Frankalmoigne, for if not, it ſhould be acquited without owelty &c. 4 *Ed.* 4. *fol* 35. 30 *Ed.* 3. *fol.* 23. *Meſne* 40. agreeth, and there the Grant was *ſalvo forinſeco &c.* and it was no Frankalmoigne, but Knights ſervice &c. but

13 *H.4.f.* it is ſaid, that ſuch reſervation is good, for the Frankalmoigne, and is void for the reſidue, as a gift in Frankalmoigne reſerving Rent, the rent is void, *Meſne* 47. *vide* it is not expreſſed to be void for the reſidue, and *vide* 13 *Ed.* 1. *Formedon* 63. rent well reſerved upon reſervation of Frankalmoigne, *Manwood* ſaith, that the rent reſcued upon Frankalmoigne doth not ſtand, and to this of Frankalmoigne agreeth, 33 *H.6.f.*7.

Stonſe and *Thorp* hold that Frankalmoigne ſhall be aſſets in a Formedon, but cannot be extended nor aliened to a ſtranger, nor ſevered from the Donor and his heirs, 14 *Ed.*3. *Meſne* 7. and there it is ſaid, if a Mannor whereof Frankalmoigne is part, be aliened or recovered, the Frankalmoigne remains, but if it eſcheat it is extinct, &c. an Abbot attorns to the Grantee of the Mannor, who confirms to him to hold in Frankalmoigne, yet void, becauſe no tenure between them by attornement, 3 *Ed.* 3. *Meſne* 46.42 *lib. Aſſ. P. Travers* 24. But if the Tenant in Frankalmoigne make a Feoffment to hold of the Lord, the Feoffee ſhall hold by Fealty, 31 *Ed.*3. *Ceſſ.*22. *Skip.* held otherwiſe, and that he ſhall hold as he held over *ibidem*, but the other opinion was the better. The Tenant holds in Frankalmoigne, and if the Meſnalty doth eſcheat where the Meſne doth releaſe to the Tenant, the Tenant ſhall hold of the Lord, as the Meſne, holds &c. not by Fealty onely, *Quære. Danby*, as it ſeemeth agreed not to this, 7 *Ed.*4.*f.*12.

XXXI. *Where Rent ſhall follow the nature of the Land.*

A Seigniory with ſervice iſſuing out of Land in Gavel-kind diſcends to the heir at the Common Law; as Lord, Meſne and Tenant, the ſervice of the Meſne is at the Common Law, but the ſervice of the Tenant ſhall be of the nature of the Land, *Quære* 7 *Ed.*3.*f.* 38. *Avowry* 150. 4 *Ed.* [illegible] *fol.*53. 21 *H.6.fol.*11.

But rent charge iſſuing out Land in ancient demeſne or Gavel-kind ſhall be of the ſame nature, although it began after time of memory, 22 *lib. Aſſ. p.*78. *Mort' d'anceſtor* 26. & 4 *Ed.*3 *f.*32. It is ſaid, That a woman ſhall not have dower of the moyety of the Rent beginning ſince memory, where ſhe might have the Land whereof &c. by the Cuſtome; ſo of Common, but afterwards it was held, that in both Caſes they ſhall follow the nature of the Land, and ancient demeſne abated a Writ brought of the like rent; and rent ſervices reſerved upon a Feoffment of Land of ancient demeſne, is ancient demeſne in the hands of the Tenant in Frank fee, in the hands of the Lord &c. but the Rent which any Tenant *paravaile* receiveth, be it ſervice, charge or ſecke, is ancient demeſne, 26 *H* 8 *fol.*4.

f. 414 *Ed.* 3. *f.* 53. and uſage ſhall follow the nature of the Land whereof &c. 26. *H.* 8. *f.* 4.

Two coparceners make a Feoffment, reſerving Rent, of the Rent they be parceners, and not jointenants, and there ſhall be no ſurviver &c. 38 *Ed.* 3. *f.* 32.

Vide 26. *H.* 8. *f.* 4 *per Shelley, &* 14 *H.* 8. *f.* 5. *per Roo*, that Rent newly created, where Preſcription ſerves not, cannot be of the nature of the land, in as much as it is by Cuſtome, which cannot be without Preſcription, it is ſaid againſt this reaſon, that the Rent is the profit of the land, ſo in effect the ſame thing that it was before.

27 *b.* 89 *Vide Fitz & Norwich, that rent out of Gavel kind ſhall be of the nature of the Land and partible. V.* 22 *Aſs.* 78 *ac. and the aſſiſe out of ancient demeſne, ſhall be of the nature of the Land, and Gavel kind Land bolden by Knights ſervice ſhall be partible, v.* 6. *E.* 6. *Dy.* 72. 2 *eſcheat* 179. 5 *E.* 4. 8. 22 *E.* 4. 10. *Mar. Dy.* 133. 16 *Eliz. Dyer* 357 *ac.*

XXXII. *How rent ſervice, or other inheritance ſhall be parcel of a Town, of a Caſtle, or a Mannor, and when it ſhall be ſevered.*

THe lord of a Mannor grants 20 acres parcell of it to a ſtranger in fee to hold by certain ſervices, and ſaith not as of the Mannor, yet the ſervices are parcell of the Mannor, Mannor, 22 H. 6. *fol.* 50. *Avowry* 16. 13 Ed. 3. *Writ* 240. and a man ſeiſed of a Mannor by diſcent from his mother makes a Feoffment of part to hold by 4 s. without ſaying as of the Mannor and dieth, yet the heir of the mothers ſide ſhall have this Rent as parcell *&c.* 5 *Ed.* 2. *Avowry* 207. *Quære* if he had granted the whole Mannor reſerving Rent to whom it ſhall diſcend, 22 *lib. Aſſ. P.* 53.

If the diſſeiſor of my Grandfather leaſeth parcell to one, and parcell to another in a Writ of Entry againſt the diſſeiſor, I ſhall make exception, but if my Grandfather had made Leaſes for life of parcell &c. and the Leſſees are dead, and the diſſeiſor leaſe the parcells in the ſame Mannor, I ſhall have a generall Writ to demand the Mannor, and if he plead that others are Tenants of parcel &c. it is ſufficient to maintain, that he is Tenant of the Demeſnes and ſervices, as it was in the hand of Grandfather, 10 *Ed* 3. *fol.* 56. *Brief* 701.

Tenant in Tail of a Mannor leaſeth parcell for life, and grants the remainder to another, the iſſue in a Formedon of the Mannor ſhall make exception of parcell, ſo the Reverſion is ſevered, 19 *Ed.* 2. *Brief* 845. *Quære* if he had leaſed the reſidue to the ſame perſon.

One who hath Waiſe and Stray as appendant or parcell of his Mannor, grants the Moyety of his Mannor, he ſhall have every ſecond Stray, 13 *Ed.* 3. *Brief* 678. *Vide* Waiſe and Stray appendant to an office, 8 *H.* 7. *fol. per Fineux.*

A man aliens parcell of his Mannor, and afterwards is diſſeiſed the

the Heir in a Writ of Entry need not make by exception for it ſhall be of a thing aliened or ſevered by the Diſſeiſor, or by him that had not power to alien by right, as Tenant in tail, and it ſhall be accepted although it be aliened but for life, for it ſhall not be recovered without naming the Tenant therof, *&c.* 4 *Ed.* 3 *fol.* 8. *Writ* 713. 10 *Ed.* 3. 2 *fol.* 56. *writ* 701. 5 *Ed.* 3 *fol.* 54.

It is ſaid, if there be Tenant in Dower, or for life, of parcell of a Mannor, and the Heir is diſſeiſed of the Mannor, and his Heir being a *Precipe* of the Mannor, that by the recovery he ſhall alſo recover the Reverſion, but not, if the Endowment were after the Diſſeiſin. *Perkings. fol.* 83. and there it is ſaid, if the woman recover Dower againſt the Diſſeiſor depending the ſame Writ for the Heir that it ſhall abate, 4 *Ed.* 3. *fol.* 8. *&* *fol.* 49 5 *Ed.* 3 *fol.* 36. *&* 54. But it ſeems otherwiſe, that by the recovery of two parts, the Reverſion of the third part is recovered, 7 *Ed* 3 *fol.* 44. But it is ſaid in the end that it is not Law, &c.

It is ſaid, that an Advowſon is not parcell of a Mannor but appendant as a Common 44 *Ed.* 3 *fol.* 8. *&* *fo*; 29. 38 *H*: 6. *fol*: 38. *&* 43. So Waiſe, Stray, Leet, Way, Villain regardant, &c. Warren, and theſe will not paſſe without ſaying *Cum pertinent*. 8 *H*: 7 *fol*: 4, *&* 5. and how an Advowſon may be parcell of an Honour, ſee 10 *H*: 7 *fol*: 19.

If a Diſſeiſor of a Mannor make a Leaſe for life of one acre of Land parcell, &c. as to the Diſſeiſee, the reverſion is ſevered, for he ſhall make Exception *&c.* 5 *Ed*: 3 *fol* 54. And as to this diſſeiſor it is parcell and paſſeth by his Grant of the Mannor, yet if a ſtranger out him of the Mannor, he ſhall not therby out him of the reverſion, untill the Leſſee be alſo outed *per Littleton*, and therfore if he recover the Mannor the acre is parcell again, 4 *Ed*: 3 *fol*: 5.

The Husband ſeiſed of a Mannor in right of his Wife, they leaſe one acre parcell, &c. to *B*. and grant the Reverſion therof to a ſtranger, and after levy a Fine of the Mannor *come ceo* to the ſame ſtranger by the name of a Mannor, and take it again for life, the remainder to T. B. dieth, the Husband and Wife enter, and alien the whole, it was holden might enter, for the forfeiture in the ſaid acre, and into the whole; yet it was agreed, if the Husband had aliened an acre parcell for life, the reverſion therof is ſevered, and now he is ſeiſed in his own right: But where the Wife ioyneth, it ſeems the reverſion is to both. Alſo the fine is as ſtrong as a releaſe, ſo their right is gone: likewiſe if the Grant of the Mannor were by Deed, the Wife may have a *Cui in vita* of the whole, if he have releaſed; It was adjudged againſt the Wife, 18 *lib. Aſſ. p.* 2. *Aſſiſe* 212. 18 *Ed.* 3 *fol.* 38. And it was ſaid that the Reverſion continued parcell of the Mannor where the Husband alone made the Leaſe; *Quod mirum* 15 *Ed*: 3. *Grants* 62. and *vide* agreeing to it 38 *Ed.* 3 *fol.* 38. 5 *Ed.* 3. *fol.* 42. *&* 18 *Ed.* 3 *fol.* 54. that the Reverſion continues to the Wife, &c.

If the Husband ſeiſed in right of his Wife alieneth parcell with the Advowſon appendant, and dieth, now the Advowſon is not appendant to the

the parcell, but to the Mannor, otherwiſe it is of Tenant in Tail, 43 *Ed.* 3 *f.* 26. 5 *Ed.* 3 *f.* 66. 43 *lib. Aſſ. P.* 8. 22. *Ed.* 3 *fo.* 6. *Darrein preſentment* 6.

If before the Statute *1.* enfeoffed a ſtranger of 6 acres of parcell &c. to hold of me, the rent is parcell of the Mannor, and I am Tenant of the whole Mannor to every *Precipe*. So of a gift in tail now &c. if a gift in tail be made of a Mannor, ſaving 6 acres, the acres are parcell, for exception ſhall be made it ſeems, the ſame proves not parcell, 13 *Ed.* 3. *Brief* 240. *& vide* 38. *H.* 6. *f.* 33. that they are not parcell &c.

Tenant in Tail of a Mannor, and of certain acres which ſometime were parcell of it, alieneth the whole, and the alienee levieth a Fine of the Mannor, and of the acres by the name of a Mannor &c. he ſhall be vouched for the whole as a Mannor, but if the iſſue in tail be to demand &c. he ſhall demand the Mannor by it ſelf, and the acres by themſelves, for ſuch was the Seiſin of his Anceſtor, or he ſhall make exception, if he demand the Mannor onely, 41 *Ed.* 3 *fol.* 23. *vouch* 70.

A man ſeiſed of two Mannors, alienes parcell of both, reſerving one rent, this is regardant to both the Mannors and parcells, 17 *Ed.* 3. *fol.* 19. *Wards* 109. if upon partition by three parceners, 100 s. is allotted to two for equality, *ſcil.* 50 s. to the one, and 50 s to the other, this is one rent, 29 *lib. Aſſ. P.* and parcell of their Mannors, as it ſeemeth 22 *lib. Aſſ. P.* 53. *Quere* becauſe ſeverall Mannors, in which Caſe the Advowſon appendant to one is made in groſſe by the partition, 1 *H* 7 *fol.* *vide* 31 *lib. Aſſ.* and where one alienes two Mannors in divers Counties reſerving a rent, this is one rent and one Avowry, but how he ſhall have Cuſtomes and ſervices, ſee 30 *Ed.* 1. *Droit* 73.

It was holden, if a man hath a houſe and twenty acres of Land, that before the Statute, he might not make Feoffment of the acres, nor of parcell to hold of the houſe, nor of the acres, nor of a Plow Land, but well of a Mannor, 8 *H.* 4. *fol.* 1. *Reſcous* 5. but the Court, Curtelage and Barn may well be parcell of a houſe, 34 *H.* 6 *fol.* 45. and Land may be parcell of a Meſſuage, *per Fitzh. f.* 180.

And it is agreed, that Land may be parcell of a Town, ſo houſes, and if they be decayed the ſoil is parcel &c. but a houſe is not parcel of the ſoil, though freehold, but may be demanded by the name of a parcell of Land containing 20 foot &c. where there is a chamber, yet a chamber is parcell of the houſe, not of the Land, yet Land may be parcell of a Caſtle, and it is proved by tenure, by Caſtell guard, for if the Land eſcheat, it ſhall be parcell of the Caſtle, 5 *H.* 7 *f.* 9.

Common or way appendant, or eſtovers to be burned in ſuch a houſe, cannot be granted over, ſo not parcell, 5 *H.* 7. and fealty is not parcell of homage, nor homage of eſcuage, but incidents, 8 *H.* 7. *f.* 5.

A Leet may be parcell of an Hundred, *Quere* if of a Mannor, and a Court of Piepowders is incident not parcell of a Fair, 8 *H.* 7 *f.* 1. *&* 5. *Leet* 4. Leet may be appendant to a Mannor by Preſcription, 4 *Ed.* 3. *f.* 10. *Avowry* 161.

An

An Advowſon is ſaid to be parcell of an Earldome, Honor or County; ſo all liberties given to an Earl upon his Creation are parcells &c. 10. *H.* 7. *f.* 19. 5. *Ed.* 3. *Aid of the King* 83.

A rent charge granted to a Lord, and Lords of the Mannor of *D.* before memory, and ſo continued is parcell of the mannor, 31 *lib. Aſſ. P.* 23. *& vide ſupra*, 22 *lib. Aſſ. P.* 53. that rent granted for equality of partition, is parcell of the Land and Mannor allotted &c.

An annuity may not be ſaid to be parcell of a Mannor or houſe, but may well be of a Priory, 22 *Ed.* 4. *fol* 44. but rent ſecke may be parcell of the Mannor, 31 *lib. Aſſ. P.* 23.

A feoffment before the Statute reſerving half an ounce of Cotton yarn, three pounds of wax, lamp and oil, this is rent ſervice, and one aſſiſe lieth of the whole, and each of them is parcell of the rent 35 *H.* 6. *fol.* 6.

A Prior doth covenant for him and his ſucceſſors to do divine ſervice in the Chappell of *A.* for him, and his Heirs in his Mannor, and for his ſervants, *A.* alieneth the Mannor to his ſecond ſon, he ſhall have Covenant for this ſevice, parcell of the Mannor paſſeth with it, but he may maintain this action alſo by Preſcription, 42 *Ed.* 3. *fol.* 3. 2 *H.* 4. *fol.*

Corody of a houſe, a Plow-land, a Gown, a Stable, drink and fuel, all theſe are one Corody, and one aſſiſe lieth for all, and every one is parcell of the Corody, 31 *H.* 9. *fol.* 15. 30 *lib. Aſſ. P.* 4.

Land may well be parcell of an office, as to the office of the Warden of the Fleet, 1 *H.* 7. *fol.* 29. and there it is ſaid, that Land may be appurtenant to a Corody.

Apportioned as if the Leſſee recovered.

The fees and profits are parcell of the office, to which *&c.* and paſſe by grant of it, as of a Herald *&c.* 5 *Ed.* 4. *fol.* 8.

XXXIII. *How rent ſervice ſhall be apportioned by purchaſe of parcell.*

Vide C. 6 *part in Bruertons Caſe: C.* 8. *part* 105 *in Talbots caſe.*

IN an Aſſiſe of Rent ſervice upon non-tenure of the Land pleaded, the plaintiff averring him Pernor ought to ſhew the quantity of the Land, for the rent is apportionable, 12 *Ed.* 4. *f.* 11. *Aſſiſe* 32. *Non intelligo* whether he ſpeak of the whole.

A rent ſervice at the common Law might be apportioned, as if the Leſſee grant part of the Land to the Leſſor, or part of the Land is recovered in Court, or by entrie, or a forfeiture, the rent ſhall be apportioned: So if the Leſſor grant part of the Reverſion to a ſtranger, ſo if Tenant by Knights ſervice deviſe the Reverſion of two parts 1. Vide C. Littleton 148. 39 *Eliz. Callis and Hardings caſe.* 43 *Eliz. Weſt and Laſſells caſe there vouched.*

One

One entire fee was holden by Caſtell guard, *ſcil.* to find a man armed for 40 dayes in the time of war, the Tenant enfeoffed a ſtranger of the twentieth part of the fee, to do the twentieth part of the guard &c. and it was holden that this may be apportioned, and that he ſhall pay the twentieth part in money, *ſcil.* 4 s. for two dayes, but if the tenure were to ward in his own perſon, this ſhall not be apportioned, nor no contribution ſhall be *&c. Avowry* 144. and note that both theſe Tenures are Knights ſervice &c. 31 *Ed.* 1. *Aſſiſe* 441. But ſee this not certain, but *Littleton* ſaith that rent for Caſtell guard certain is ſocage, but *Fitzh. fol.* 256. that this alſo may be Knights ſervice, becauſe now there is no guard &c.

30 Eliz. B. R *in Hardings caſe. If a man make a Leaſe of Copyhold and Freehold Land rendring Rent, and the Copyhold diſcends to one and the Freehold to another, the rent ſhall be apportioned, but ſee* Plowd. Cogit.

118. 31 h. 6. 16. & 3 h. 6. *Where a man granted a Rent out of Burrough Engliſh land, and Land at the Common Law, the Grantee had iſſue two ſons that held it ſhall have the whole rent, for the rent is iſſued out of the whole Land, per my & per tout, and becauſe the Common Law is more worthy then the cuſtome, the preheminence ſhall be to the heir at the Common Law. Cogitat. grantee, per my & per tout. preheminence. Vide* 34 *E.* 3. herriot 1. *if ſervices be intire by alienation of part of the Land, every alienee ſhall do the intire ſervice, ſo if tenant holdeth of me by a herriot of her alienee parcell, the alienee ſhall pay a herriot, and the ſervice is not multiplied,* 45 *E.* 3. 23. *acc.*

Two parceners hold by homage, fealty, and to find a Cart to carry his Corn four dayes in *Auguſt*, the one alieneth her part, and they did their ſervice in Common &c. yet it was held that the Lord ſhould make ſeverall Avowries upon them, 2 *Ed.* 2. *Avowry* 284.

If a rent ſervice be intire there by purchaſe of parcell of Lands the rent is extinct, but if ſuch a ſervice be intire per bone pub. thereby the purchaſe of parcel of the Land, the ſervice doth remain 35 H. 6. 11 *Eliz* Dyer 285.

By recovery and Entry into one acre in *Ceſſavit*, every intire ſervice is gone if it were annuall, as ſuit &c. not homage or fealty, nor no ſeveral ſervice, but for the portion, 40 *Ed.* 3. *fol.* 41. 5 *Ed.* 2. *Avowry* 206. Note that apportionment ſhall be according to the value, not according to the quantity of the Land, 18 *Ed.* 2. *Avowry* 218.

In a *Ceſſavit* of a houſe and 3 acres, it is no plea that the plaintiff hath entred into the houſe without anſwering to the reſt, 11 *Ed.* 3. *Ceſſ.* 21. but Entry upon parcell ſhall abate the whole Avowry for Rent upon a Leaſe, for the whole is in ſuſpence, 9 *Ed* 4. *fol.* 1. but it is there ſaid, that if the Lord of the fee entreth into parcell, it ſhall not abate the Avowry for the reſidue, *Perkins* holds the contrary *fol.* 16.

See 30 *aſſ.* 12 *L.* 148. *A Rent ſervice may be be extinct in part or portion for the reſidue by Act in Law, but the rent ſervice cannot be ſuſpended in part, & apportioned in part, but by the act of the party*

Lord and Tenant before the Statute of three acres of Land and two of Meadow by 20 d. the Tenant enfeoffeth three ſeverally of the three acres to hold of himſelf, and after the Statute, enfeoffeth *D.* of the meadow to hold of the Lord, the Lord brings an aſſiſe of the whole Rent againſt *D.* and it ſhall abate, for he could not apportion his plaint for the three acres, becauſe the Tenants of the three acres are not named in the Writ, 4 *Ed.* 3 *aſſiſe* 165. but it had been ſufficient to have named the Meſne of the three acres &c.

A certain Meadow and four acres of Land are given in tail, the Donee grants one acre parcell &c. to an Abbot to hold of Donor, and the two

acres to hold of the Donor, and reſerves the Meadow, the Donor brings an aſſiſe of the whole rent againſt the Donee, and layeth the ſeiſin of the whole by his hands, and it abated, for the rent ſhall be apportioned, and he is not the entire Tenant, although the Statute ſaith, that where the Tenant in fee ſimple aliens parcell, it ſhall be held *pro particula*, and by alienation the Tenant in tail, the Donor may not alter his Avowry clearly, but the diverſity appears by this, that at the Common Law in aſſiſe every Tenant of rent ſhall be named, be it rent charge or ſervice, and now the others are Tenants, but the Lord may diſtrain in every part, and avow upon his ancient Tenant for the whole at the Common Law, for that he remains Donor in Tail, 3 *Ed.* 3. *fol.* 21. *Aſſiſe P.* 18. *Aſſiſe* 173. but if the Meſne of the whole rent be named, it is ſufficient without naming the other Tenants, *ibidem*.

But *Thorp* ſaid, if there be a Leaſe for life, a Tenant in tail, rendring rent, and the Tenant in tail or leſſee leaſeth parcell to divers ſeverally, that the Donor ſhall have ſeverall aſſiſes, and ſeverall Writs of Waſt, but one Avowry, and it ſeemeth that in every Aſſiſe he may demand the entire rent againſt every one, or the portion at his election, 22 *lib. Aſſ. P.* 52 *Conuſ.* 72.

A rent or a ſervice either in reſpect of the fealty may be apportioned, but for the perſonality is indiviſible and ſhal not be apportioned, vi. 5. E. 4. 6. *Plo. Com.* 72. *If the Conuſee ſurrender part the land to the Conuſor, or the forfeiture of part of the land deſcends to the Conuſor, the execution is gone.* C. 8 *part Talbotts Caſe.* C. 4. *part Bracions caſe.*

If Tenant in fee had aliened at the Common Law, three acres ſeverally to hold of the chief Lord, the Lord may have an Aſſiſe againſt every one for the whole, but if the Tenant had aliened to hold of himſelf, the Lord might have the Aſſiſe againſt the Meſne onely, and now if the Tenant alieneth where the ſervice is intire, the Lord may have an aſſiſe againſt every one of the whole *per Wilſon*, but the book ſpeaks that the Avowry is good upon the feoffee for the whole, but payment of one of the ſervices diſchargeth all, 22 *Ed.* 4. *fol.* 36. So of a rent upon a leaſe, which comes into ſeverall hands, 22 *Aſſiſe* 52. &c.

If Lord or donor purchaſe parcel of the Land, the rent was apportioned at the Common Law in Aſſiſe, and he abridged his plaint thereof, 4 *lib. Aſſ. P.* 5. *Aſſiſe* 189. and ſo it was, 3 *Ed.* 3. *fol.* 21. where the Donee in Tail aliened an acre to the Donor, who brought Aſſiſe of the whole rent againſt him, and abridged, and where the Donee had aliened another acre to a ſtranger, it ſeems that for that the Aſſiſe ſhall abate &c. 7 Ed. 3. 21.

If the one ſiſter in the life time of her brother entreth and Leaſeth the whole, the brother dieth the other parceners enter into their portions, the Leſſee ſhall hold her portion, 20 *H.* 6. *fol.* 24.

The Tenant Leaſeth the whole or parcell for life, in tail, or for years, the Lord Paramount may avow in every parcell for the whole, *Perkins fol.* 129. And where the Tenant enfeoffs a ſtranger of the moyety to hold &c. no apportionment, becauſe the Feoffment is not to hold in ſeveralty, and therefore where one joint tenant alieneth his part, no tenure *pro particula*, but the parcener after partition ſhall hold *pro particula*, and ſo of exchange to hold in ſeveralty, and Meſnalty, ſhall not be held *pro particula*,

la, for the Statute referres to Land, *Perkins* 129. but ſee 8 *Ed.*4.*fol.* 20. Meſnalty held *pro particula &c.*

If Land held by 20 s. rent be given to three joint tenants, one Avowry ſhall be, and not *pro particula* 35 *H.*6.*fol.*51.

XXXIV. *How a Rent charge or Rent ſecke ſhall be apportioned.*

GRantor of a Rent charge in tail, enfeoffs a ſtranger of parcell &c. If the Grantee entreth into parcell upon the feoffee, or recovereth it in an aſſiſe, and after brings an aſſiſe of the Rent, it ſhall be apportioned, and the diſſeiſin of parcell goeth to the Writ, and the purchaſe of parcell goeth to the action of the whole, and the recovery by the puiſne Title makes it apportioned, *Wilby* ſaith, *contra de rigore Juris*, but let that paſſe, but if the recovery were upon the eigne Title, *Watſon* there ſaith, that the whole Rent remains out of the Land not recovered, 30 *lib. Aſſ. P.* 12. *Aſſiſe* 300. but parcell being diſcended it ſhall be apportioned, and if the Rent be 10 l. and the Land out of which be worth but 5 l. and the Grantee is ſeiſed of parcell of the Land, to the value of 10 s. the apportionment ſhall be made according to the value of the Land, not of the Rent adjudged, 30 *Aſſ. P.* 12. and it ſhall be according to the value of the Land, not according to the quantity thereof &c.

34 Aſſ. 1. *Aſſiſe* 318. *one Coparcener hath a Rent-charge out of the land of her Father who dieth before partition, the rent is ſuſpended in the whole, but after partition it is revived.*

A Rent charge of 10 l. granted to husband and wife, he dieth, ſhe recovers Dower of the moyety of the Land, ſhe would have demanded the moyety of the Rent alſo, but ſhe could not by reaſon of joint tenancy, yet ſhe demanded dower of the elder Title, of which the charge was not, 5 *Ed.*2. *Avowry* 206.

If Land diſcend to three parceners, out of which the one had Rent charge before, it ſhall be apportioned after partition made, ſo if he who hath a Rent in fee purchaſe the Land for life, the Rent ſhall be renued in his heir, 34 *lib. Aſſ. P.* 15. 7 *H.*6.*fol.* 3. & 4 *lib. Aſſ. P.* 22. 35 *H.* 6 *fol.*

If a man hath a rent-charge out of 3. Ac. *the Villain of the Grantee purchaſeth part of the Land, the Lord entreth, the rent ſhall be apportioned, vi. Perkins* 129. *acc.*

Diſſeiſin of parcell of the Land, ſuſpends the whole Rent, 30 *Aſſ. P.* 12. 35 *H.*6. *Avowry* 46.

If 20 s. be arrear of 100 s. by the year, he may avow if he will for 100 s. *Quare* if he may avow for part of the 100 s. 21 *Ed.* 3.*fol.* . *Scire facias* 22. *Vide Aſſiſe Diviſ.* 23. 8 *Ed.* 2. *Aſſ.* 387.

If a man hath a Rent charge, or a Seigniory out of an acre of Land, and that acre with another acre doth diſcend to him, and another, and upon partition the acre charged is alotted to the other, he ſhall hold it charged with all the Rent *&c.* 9 *lib. Aſſ. P.* 22.

A charge iſſueth out of divers Lands, whereof a ſtranger recovers parcell, the Grantee brought an Aſſiſe of the whole, againſt him who loſt his part, and it abated for not naming the recoverer, 8 *Ed* 2. *Aſſ.* 392.

XXXV. *Where and how entire Rent ſervice, ſuit reall or ſervice may be apportioned, and where another thing may be done.*

IF Land out of which Rent ſervice is due, come into divers hands, the one ſhall do the ſuit, and the others contribute, as it ſeems by *Richill*, but if parcell come to the hands of the Lord, be it by purchaſe or diſcent, the whole ſervice is gone, 34 *Aſſ. P.* 15 for the annuall and intire is gone by the purchaſe, but if parcell diſcend the whole remains *per Perkins fol.* 16.

C 6 part 2. in Bractons caſe. acc.

9 C. 8 part Talbots caſe acc.

It is ſaid, that ſervice entire not annuall, as homage &c. continues notwithſtanding the purchaſe or diſcent of parcell, according to 5 *Ed.* 2. *fol.* 65. *Avowry* 152. for there it is ſaid, that contribution ſhall be made, which ſeems not to be Law.

Although the Lord ſhall not have but one ſuit ſervice of Lands being in divers hands, *per Marlb. cap.* 10. 34 *Aſſ. &c.* yet he may diſtrain every Tenant for the whole, and if one do ſuit, all the reſt are diſcharged, as to the Lord, but they ſhall make Contribution to the other, 11 *Ed.* 3. *Avowry* 101.

35 b. 6. 5. C. 2 part 2 acc.

So of every entire ſervice, that there cannot be apportionment, as of a horſe, a hawk &c. 22 *Ed.* 4. *fol.* 36. but *Quære* if Contribution ſhall be made for other ſervice then for ſuit; it ſeems not, nor for ſuit, if it be not by compoſition between themſelves, *Fitzh. fol.* 162.

Where Land out of which ſuit reall is due, comes into divers hands, every tenant ſhall do ſuit, notwithſtanding the Statute of *Marlb. cap.* 9. and although that one Tenant hath all the Lands out of which the ſuit is due, the Lord ſhall have divers ſuits, and divers amerciaments of him for all the ſuits, 11 *Ed.* 3. *Avowry* 101. and if Land, out of which Herriot Cuſtome is due, cometh into divers hands, every one ſhall pay a herriot, otherwiſe it is of Herriot ſervice, 34 *Ed.* 3. *Herriot* 1. agreeth of ſuit reall, 45 *Ed.* 3 *fol.* 23. by this it ſeems that jointtenants ſhall make but one ſuit, *Quære* of Tenants in common, becauſe ſeverall tenants, & *Fitzh. fol.* 162.

If Land be charged to me by recognizance or Statute, and the Land come into divers hands, and I purchaſe parcell, or parcell diſcend unto me, I ſhall have execution of no part, becauſe I cannot make contribution to my ſelf &c. 34 *lib. Aſſ. P.* 15. but it is to be underſtood that all the Land is out of the hands of the Conuſor, for of that in his hands I ſhall have execution, 45 *Ed.* 3. 3 *fol.* 22. 15 *H.* 7. *fol.* & 15 *Ed.* 4. *fol.*

11.

11 *Hen.fol.*4. 13 *H.7.fol.*22. But it is holden that if I have execution of Land by Statute Merchant, and purchaſe the fee of parcell, or it deſcends unto me by one of the Conuſors, all my eſtate is extinguiſhed, *per Bryan* 15 *Ed.*4.*fol.*6. and note, that if ſuit ſervice be due to the King, and it come into divers hands, ever y one ſhalldo ſuit, as well as ſuit reall, 45 *Ed.* 3. *fol.*23. *Fitzherbert* 156. So of parceners before partitition and afterwards.

XXXVI. *What things lie in in Tenure or may be held.*

A Vowſon in groſſe holden, and the heir was in ward for it, 20 *Ed.*3. *Darrein preſentment* 13. and holden by half a Knights fee, 12. Ed. 3.*Darrein preſentment* 18. 33.*H.*6.*fol.*34.15 *H.*7.*fol.*8. & 21 Ed.3.*fol. Quare impedit* 50.

Vide contra 5 *H* 7.*fol.*38.&c.Ed.3. *Mortmain* 11. It was given in *Mortmain.*

The King may grant rent to hold of him, and ſo may ſell to a common perſon, and the King may grant a fee farm to hold *per ſervitia debita* &c. this is Knights ſervice,44 Ed 3.*fol.*45. *Grants* 47. 10 *H.*6.*fol.* 12.*vide Wards, Diviſ.*13.

If the Meſne grant the Meſnalty in tail reſerving rent, this is a good reſervation for the poſſibility of eſcheat, but in the mean time it is not holden, 1 *H.*4.*fol.*2.9 Ed.4.4.*fol.*3. and a Fine was levied of ſervices to hold of the Conuſor, 19 Ed.2. *Fines* 126.14 Ed.3. *Avowry* 117.

A. holds of *B.* by homage, and 20 s. 2 d. rent, *B.* grants to his ſon the 20 s. and reſerves the 2 d. for life, rendring a penny, and after grants the homage 2 d. and the reverſion of the 20 s. to *S. A.* attorns, the ſon attorns for the 1 d. and alienes the rent in fee, *S.* enters for forfeiture, ſo the rent is holden and by grant of the Reverſion of the 20 s. the penny reſerved &c. paſſeth as parcell of the Reverſion, 14 Ed. 3. *Avowry* 117. 1 *H.*4. *fol.* 1.&c.

A market or Fair lyeth not in tenure, 12 Ed. 2. *Dower* 157.

Plaint in an aſſiſe of office of Serjeanty of the Common Bench, 7 Ed. 3.*fol.* *Aſſiſe* 135. So it ſeems it lyeth in tenure as a Formedon of office, or of the profits of a Mill, 18 Ed. 3. *fol.*

Covenant to levy a Fine of Tenements and of a Fiſhing in the water of *D.* 1 Ed.3.*fol.*4.*Fines* 101. and that it lieth in Tenure, *Vide* 40 Ed. 3. *fol.*44. But in a *Scire facias* out of a Fine, by which the Fiſhing was granted to an Abbot, for which he grants twenty Shillings Rent, and makes him not Tenant of the Soile: This was held

held no rent ſervice, becauſe a fiſhing lyeth not in grant, nor is amnuable, and it chargeth the perſon, 32 *Ed.*3. *Scire facias* 100. but it was ſaid to be ancient demeſne, 40 *Ed.* 3.*fol.*44.

An hundred Leet, or Knights fee lyeth not in tenure, and cannot be granted to hold &c.30 *lib. Aſſ.P.*5.

XXXVII. *Where Lands* &c. *may be holden by two ſeverally, of the one by concluſion, of the other by right.*

IF my very Tenant granteth the Land in Tail, *Tenend. de capital. Dom.* the Donee payes the ſervices to me, and gives notice, I may avow upon after as my Tenant by way of eſtoppell; not in right, ſee the contrary if it be not by fine, or matter of record, of the tenant in tail, but if he be Tenant in fee, he ſhall be eſtopped by matter in fact, 2 *Ed.* 3.*fol.*33. *Avowry* 170. *vide* 1 *Diviſ.*13.*F.*20 Ed.3. *Diviſ.*19.*D.*

2 E.4.6.*b.*by Cloth.vi.*B.r. avowry* 93.*acc.* If the Lord acccept ſervice of the Diſſeiſor, he is his Tenant by way of eſtoppell, 41 Ed.3. *fol.*26.48 Ed.3.*fol.*9.17 Ed.3.*fol.*6.

If a ſtranger avow upon my Tenant, who traverſeth the Avowry, and this is found againſt him, he is now Tenant to the ſtranger alſo by concluſion, 32 Ed.3. *Avowry* 113.

It being found that my Tenant holds of the King, and doth alien without licenſe, whereby he ſueth an *ouſtre le maine* by petition, and takes a feoffment by Charter from the King to hold of him, now he is my Tenant of right, and Tenant to the King by eſtoppell, 32 Ed. 3. *Avowry* 113.

A.6.E.3.12.*b.* *acc.*47 E.3.21 *acc.* So if my Tenant enfeoff the King and take it back again to hold of him, 45 *Ed.*3. *fol.*6.20 *lib. Aſſ.P.*17.

If the King ſeiſe a ward, I am put to a Petition, becauſe another thing then what I was ſeiſed, 17 *Ed* 3. *fol.* 31.37.

Husband and wife by Proceſſe out of the Exchequer acknowledge to hold of the King. It is holden that he ſhall have ſervice and Ward, and the Lord put to his petition &c. So by ſuing of Livery by a falſe office, the heir himſelf is eſtopped, 46 *Ed.*3.*fol.*12.

If the Husband of a Lady of a Mannor confirm the eſtate of the Tenant to hold by leſſe ſervices &c. yet in right he holds of the wife, and by concluſion of the Husband, 10 *Ed* 3.*fol.*22. *Avowry* 238.

If the Tenant acknowledgeth to hold of the Lord by Knights ſervice, by Indenture, it altereth not the Seigniory, but by eſtoppel, 46 *lib. Aſſ. P.*13.39. *lib. Aſſ.P.*3.

But by acknowledging to hold of another by Indenture, the heir ſhall alſo be eſtopped, if the Eſtoppell diſcend upon him, 35 *H.* 6. *fol* 40.41. but in the firſt caſe, the Heir within age ſhall not be bound, if the Lord hath not been ſeiſed according to the Indenture, 39 *Aſſ.p.*3.

If

If the Tenant for life acknowledge the Reverſion to a ſtranger, by aid, prayer, receſceipt or in in waſt, or in *ad terminum qui præteriit*, or by Fine, he is alſo his Tenant by eſtoppell, 37 *H.6.fol.* 5.5 *lib.Aſſ.p.*3. 45 *Ed.*3.*fol.*6.

Bryan ſaith, if my Tenant pay the ſervices to to a ſtranger, yet he may afterwards deny him, if he avow by the ſeiſin onely, and may plead *hors de ſon fee*, and *Keble* ſaith, that if Tenants pay their ſervices to a diſſeiſor of the Mannor, they may afterwards deny them, otherwiſe it is of an erroneous recovery, 6 *H.*7.*fol.*14. but 35 *H.*6.*fol.* 12. all agreed, *vide* 20 Ed.4.*fol.*17. agreed of the payment.

Quare if there be a difference between payment to a diſſeiſor of a Mannor, and to a Pernor of a Seigniory in groſſe, for if the Tenants pay their ſervices to him who hath a void grant, he ſhall diſtrain them again, *Quare* 6 *H.*7.*fol.*14.7 Ed.3.*fol.*8.

XXXVIII. *Where the Tenure may be altered between the Lord and Tenant by their aſſent or act.*

IT is holden, That the Tenant by Charter may avoid ſeiſin had by encroachment by his Charter in Avowry, but if the Charter be to hold in Frank-marriage, or in Frankalmoigne, and doth not expreſſe the ſervice, he may avoid it ſo, 10 Ed. 3. *fol. Avowry* 157.

A Prior which holds of an Abbot granteth by the aſſent of his Covent to hold of the Abbot by certain ſervices, and to pay 100 s. for relief after every avoydance, and the Abbot ſeiſed of relief, avowed now for it, and well by the Deed as for ſervice, yet without ſuch deed a man ſhall not have relief of a religious houſe, 20 Ed. 3. *Avowry* 124. See an Avowry for Herriot Cuſtome upon a man of Religion, *M.* 2. Ed.2. *Avowry* 178.

If the Tenant grant that the Lord ſhall diſtrain in other Land for his ſervices, this ſhall not alter the tenure, but ſhall be as a penalty, 9 *H.6.fol.* 9.20 *lib.Aſſ.P.*1. agreeth, where he grants at another place &c.

49 *E* 3.7. *The Lord in ancient Demeſne confirms the eſtate of his Tenant to hold by intire ſervices at the Common Law the quality of his eſtate is changed, & the lands diſcharged of the ancient ſervices.* C.9.part 140. *acc.*

If my Tenant who holds by 10 s. grants to hold by 5 s. yet I ſhall have 10 s. *per Pigot*, but *Bryan* ſaith, that I ſhall have but 5 s. by the eſtoppel, 20 Ed. 4.*fol.* 16.

It is holden that a Tenure ſhall not be changed by grant of the Tenant in Socage to hold in Knights ſervice, if the Lord hath not been ſo ſeiſed, and theſe caſes are by deed indented, 39 *lib.Aſſ. Aſſiſe P.*3.

The Lord by Homage, fealty, and a pound of Pepper, may releaſe or confirm to hold by the pound of Pepper onely, but he cannot reſerve another ſervice, nor increaſe the Tenure as Lord and Tenant of two acres, the one holds by 12 d. the other by 1 d. and the Lord confirms the eſtate in both to hold by 4 d. it ſhall not iſſue out of both, nor out of th

the acre holden before by a penny, becauſe he may not increaſe, *&c.* nor may change the Rent for a Roſe, 9 *H.*6. *fol.* 9. where he confirms in nine acres by the name of eight acres to hold a leſs Rent, the other acre is not charged of the old Rent, but it goes to the whole, *&c.* 7 *Ed.* 4. *fol.* 27.

Lord, Meſn, & Abbot, to the Lord confirms to hold in Frankalmoigne, it is good, and the penalty is exſtinct, 4 *E.*3. *br. Tenures* 60. *vi. C. Lit.* 305. *what caſe the confirmation was by the Meſn, and not by the Lord Paramount.*

Lord and Tenant by ſealty and rent, the Lord by deed, the eſtate of the Tenant to hold by a Reſc. 7 E. 4.25. Lit. 122 it is is void. 7 Eliz. Dy. 230 the Lord in Kt. ſervice confirms to his tenant to hold by a the reſervation is void, upon the eſtate before erected, and the old Tenure remains, vi 7 E.4.25. 4 E.12.E.4, 11. 21 E.4.62. C. Lit. 305. & 10. E.3. Avowry 100, *acc.*

Lord and Tenant by ſix marks, and to find a Chaplain to ſing Maſs, the Lord releaſeth to the Tenant by Fine the Maſs, reſerving the ſix marks and two marks for the Maſs, and it was held good, 26. *lib. Aſſ. P.* 37. *Aſſ.* 34. 9 *H.* 6.

The Lord may releaſe to an Abbot his Tenant to hold in *Franckalmoigne*, becauſe nothing is reſerved, 4 *Ed.* 3. *fol.* And *Wilby*, thought there that he might reſerve a Roſe for rent, *Littleton* agreeth of *Franckalmoigne.*

One holds of the King as of a Mannor for repairing of Pales, and the King releaſeth, reſerving a rent for the Pale, and holden to be a new rent, not parcell of the Mannor, and that the King is not bound by the Statute *Quia emptores*: But at the laſt it was ſaid, that it ſhould be void, becauſe the King had nothing in the Land, 10 *H.*7. *fol.* 23.

Vide 49 *Ed* 3. where the Lord confirms to the Meſn to hold by a leſs Service, Confirmation to hold by a leſs Service of the ſame nature is good, if the Tenant be in poſſeſſion at the time, but not if diſſeiſed, 14 *H.* 4. *fol.* 38.

XXXIX. *Tenants in ancient Burroughs and Cities, and their Priviledges.*

PReſcription that thoſe of *B.* have been uſed to be ſued by Writ of right Patent of Land, *&c.* and to proſecute in the nature of what Writ they will, is good, for an ancient Burrough, as *Exeter*, ſo that they may deviſe Land. Or that the youngeſt Son inherits: So the uſages and cuſtoms of ancient Demeſn, and yet the King cannot grant ſuch Franchiſes at this day, 37 *H.*6. *fol.* 27. 12 *Ed.*4. *fol.* 18. 40. *lib. Aſſ. P.* 35. where it is ſaid, that all ancient Burroughs and Cities are of record in the Exchequer.

Ancient Burroughs where Land is deviſable, and holds plea *Ex gravi querela*, they are not taxable to fifteens, 40. *lib. Aſſ. P.* 41.

The Kings Writ runs not in *London*, *Wales*, or the Cinque Ports, but this is by Parliament: But they may not preſcribe that the Kings Writ runneth not here without other matter, 2 *Ed.*4. *fol.* 1. & 19. And in *Lancaſter* and *Cheſter*, the Kings Writ runs not, 2 *Ed.*4. *fol* 23.

In an Aſſiſe of Freſh force in *Winch.* and falſe Judgment brought there, becauſe they uſed time out of mind to have Suitors there, and to be ſued before the Bayliffs, and the King granted that they ſhould not be ſued

ſued out of their liberty, but that they ſhould hold plea as they were wont, this ſhall not alter their Cuſtoms, 31 *Ed.*3.*falſe Judgment* 8. ſo that ſuch may preſcribe to hold plea, not to have Conuſans, 9 *H.*7.*fol.*11. 2 *Ed.*4.*fol.*19.*&* *fol.*23.

The Eſcheat of all Cities belongeth to the King, *Ex mero jure* of whomſoever they be held, 2 *Ed.*2.*Eſcheat* 12.

A Citizen is he who is born within the City and inheritable by diſcent within the City, or he that is reſiant and taxable to ſcot and lot, 38. *lib. Aſſ.p.*18 *preſcription* 34. It followeth not that he is a Citizen who hath Land within the City, *vide* 45 *Ed:*3 *fol.*26.

XL. *Where notice ſhall be given, and is materiall in another Action then Avowry.*

IF a Condition of an Obligation be made to wait upon *I. S.* every time that he ſhall come to *D.* he ſhall take notice of it; and if he be to account before Auditors aſſigned by the Plaintiff, he needs not to take notice, and where it is to enfeoff the Plaintiff he ſhall hold, *&c.* 8 *Ed.*4 *fol.* 12.*Arbitrement* 15.

A man recovers in Warranty of Charters *Pro loco & tempore*, yet he ſhall give notice if he be ſued afterwards, 8 *Ed.*4. *fol.* 11. And if the Ordinary refuſe my Clark for Non-hability or Crime, and preſent within ſix months without notice, I ſhall have a *Quare Impedit.* So after ſix months 8 *Ed.*4.*fol.*2 38 *Ed.*3,*fol.*2. So of Reſignation, 1 *H.*7.*fol.*9.

My Tenant may pay his rent arrear without notice, where I recovered damages, ſo it be arrear for one or more years, 39 *H.*6.*Bar* 79. So he may tender it to the Executors without notice given who are Executors, 21 *H.*6.*fol.*27.*Garniſhment* 10.

If the King grant unto a Town, that if Toll be taken of them, that they may take their Goods again in *Withernam*, they ſhall give notice therof, *&c*, *R.*2.*Grants* 108.

It was ordained by Parliament that certain Lands ſhould be ſeiſed into the hands of the King, and reſtored to the parties: And in a *Sci.fac.* for not reſtoring againſt the Patentees, they were excuſed becauſe they had not notice, but immediatly upon notice they ought to put them out of their hands, 43.*lib.Aſſ p.*29 *Traverſe* 26. But the contrary was held in a Premunire, and that every man ought to take notice at his perill of the danger of the Statute, *P.* 39 *Ed.*3, *Attorney* 36. But the Kings Juſtices in Judgment need not take notice of a particular act, *&c.* but the parties muſt plead it, 13 *Ed.*4.*fol.*8.

If it be found in *Jure patronatus* that the one party hath Right, he ſhall take notice therof at his perill, and ſhall make requeſt within ſix months, otherwiſe the Ordinary may preſent by Lapſe, 34 *H.*6. *fol.* 12.

Leſſee for life makes a Leaſe for years and dieth, the Termor ought to remove his Goods immediatly, and take notice, *&c.* and the reaſonable ſpace which he ſhall have ſhall be adiudged by the Juſtices, having regard to the diſtance of the place where he died from the Land leaſed, but he muſt take notice at his perill in convenient time, 22 *Ed.*4.*fol* 27.

XLI. *How a Rent-charge, or other Services, or other thing may be made parcell, regardant or appendant to a Mannor, or Lordſhip, or Land, or other thing.*

VPon Partition, a Mannor is allotted to one Parcenor, and Rent out of certain land for *Owelty*, *&c.* this Rent is regardant to the Mannor, and paſſeth by grant of the Mannor. But if Land parcell of a Mannor be aliened reſerving Rent, this Rent is parcell of the Mannor, 22 *lib. Aſſ. p.* 53. *Aſſiſe* 224. And if upon the partition the one Parcener doth Covenant with the other to diſcharge, *&c.* of ſuit of the Land, this Covenant is regardant, *&c.* and the Feoffee of the other ſhall have it, 42 *Ed:*3 *fol.*3. *Covenant* 17. *Vide Covenant Diviſ.*4. 2 *H:*4. *& Diviſ.*5. throughout.

A Lord who hath a Chappell within his Mannor makes a Church of it by preſentment, this Church is regardant and appendant to the Mannor, 21 *Ed:*4.*fol.*1. *Quare Impedit.*

H: ſeiſed of a Mannor with the Advowſon appendant, *S:* levies a Fine of the Advowſon to *H:* upon which it is agreed that *S:* ſhall preſent one turn, aud *H:* another, this is appendant for *H:* and in Groſſe for *S.* but if *H:* had levied the Fine, *&c.* it ſhould have been in groſſe for both, 43 *Ed.*3.*fol.*35. *Quare Impedit* 134. But ſee if two Parceners have an Advowſon appendant to a Mannor, the Mannor is allotted to the one, and other Land to the other, without ſpeaking of the Advowſon, this is in groſſe for both: So if they agree to preſent by turn. But if the whole Mannor and Advowſon do deſcend to the one, after it ſhall be appendant again, 2 *H:*7.*fol.*4. 13 *Ed:*3. *Quare Impedit* 58. But 43 *Ed:*3.*fol.*35.*contra*, and that it remains appendant by turn to him that hath the Mannor, *&c.* and it is agreed, where there is no partition of the Advowſon, that it ſhall remain appendant, 17 *Ed.*3.*fol.*38 *Quare Impedit* 69. 19 *Ed.*3. *Quare Impedit* 59. 13 *Ed:*2. *Quare Imp.* 170.

It is ſaid, if a Mannor with the Advowſon appendant deſcend to three Parceners, who make partition and preſent by turn, the Advowſon remains appendant for all, but if there be three Mannors, wherof one hath an Advowſon appendant which deſcend, and every one hath a Mannor, and preſent by turn, by agreement, this is in groſſe for them all: And if the elder Siſter hath the ſecond preſentment, and the younger the firſt, it is againſt common right by *Pole*, but the Book is otherwiſe, 13 *Ed.* 3. *Quare Impedit* 58.

Three

Three Joynt-tenants of a Mannor with a Hundred appendant, two releaſe to the third all their right in the Hundred, yet this is appendant for the third part, and in groſſe for the reſidue, and paſſeth not, *&c.* 33 *H:* 6.*fol:*4.

He who hath uſed to preſent at every ſecond avoidance, as appendant to his Mannor, may declare that the Moyety is appendant, not the whole Advowſon to every ſecond avoidance. And if two Joynt-tenants of a Mannor to which, *&c.* and the one alien his part of the Advowſon, this is in groſſe and appendant to the other Moyety, 35 *H.6.fol:*33.

The Mannor of *D.* holden of the Mannor of *S.* Eſcheats, now the Mannor of *D.* is parcell of the Mannor of *S.* and the Advowſon appendant to it ſhall paſs by grant of the Mannor of *S. Cum pertinentiis:* But if both Mannors come to the King by forfeiture for Treaſon, the one is not parcell of the other, becauſe this is by Prerogative, and not by ordinary Eſcheat, 6 *Ed:*3.*fol.*32.32 *H:*6 *fol.*9.

Advowſon of an Abbot or Prior appendant to a Mannor, as of the Church, 18 *Ed:*3.*fol.*15. *Quare Impedit* 151. and the Vicaridge appurtenant to the Mannor to which the Advowſon is appendant, 7 *Ed.*3.*fol. Quare Impedit* 21.*vide* 22 *H.*6.*fol.*25. *Quare Impedit* 82.

A man ſhall make plaint of a Corody appendant to a Bayliwick, without demanding it alſo, 18 *Ed.*2. *Aſſ.*377. So of any other Aſſiſe.

Common of Turbary cannot be appendant to Land, for the grant of ſuch Common *Quantum pertinet ad duas bovatas terræ* is not appertainant but in groſſe, 7 *Ed:*3.*fol.*43: *Aſſ.*134. *quare* for *Herle* ruled it not, but ancient *Hide* and *Gain* granted *Cum communia in* 100. *acris more & bruere,* this is Common appendant, *M.*15 *Ed.*3. *Aſſ.*111.

Aſſiſe of Eſtovers appertainant to two houſes, to burn, repair, incloſe, and to incloſe two acres of Land, *&c.* and to do other things, 7 *Ed:*3. *Aſſ.* 138.

A Leet may be appendant to a Mannor, Houſe, or Land, not to a Chappell, or to a Church, 10 *Ed:*3.*fol:*5, *Leet* 8.

Wreck of Sea may not be ſaid to be parcell of a Hundred, but Preſcription that he and all the Lords of that Hundred, *&c,* have had Wreck, Waife, Stray, *&c.* within the Precinct is good; 11 *H.*4.*fol:* 15. *Preſcription* 25 44 *E.*3.*fol.*19. Cuſtom 14, But agree that it is parcell of a Mannor, 11 *H.*4.*fol.*15.

Meadow may be appertenant to Land, and by grant of the Land *Cum pertinent.* paſſeth, 3 *Ed.*3.*fol.*3. *Bar* 298. Common of Fiſhing may well be appendant to a Mannor, or a houſe, and three acres of Land, 4 *Ed.* 4 *fol.* 29. *Common* 8.

Common of Paſture may be well appendant to Land, but it may not be appendant to a houſe, 15 *Ed.*2.*preſcription* 51.

Frankfold may be appendant to Land, and made in groſſe, 1 *Ed.*3.*fol.* 1.*vide* that it may not be made in groſſe but by cuſtom, 11 *H.*7.*fol.* 25. 5 *H.*7.*fol.*9.

If the Husband alien an acre parcell of a Mannor, with the Advowſon and the alienee preſents, the wife ſhall not preſent untill the acre be recovered, but if Tenant in Taile or Fee alien, *&c.* now the Advowſon is appendant to the acre, and the iſſue ſhall not preſent till it be recovered, although the alienee hath not preſented, 43 Ed: 3: *fol:* 25: 17 Ed: 3: *fol:* 3. 6 Ed: 3 *fol.* 56: *Warranty* 61: 13 H: 4 *Grant* 88 *vide* 22 Ed: 3: *fol.* 6. That the Preſentation of the alienee grants not the poſſeſſion againſt the wife, and the reverſion of the third part of the Mannor, and of the Advowſon aſſigned to the Mother of the wife, for Dower ſhall not paſs by the Feoffment of the Husband after, *Feoffments* 116: and if the alienee after preſentation alieneth the Advowſon reſerving the acre, the Wife may preſent without recovery of the acre, *per cui in vita,* 17 *Ed:* 3: *f: Darrein preſentment* 9: 43 Ed: 3 *fol:* 25:

A man ſeized of a Mannor with the Advowſon, aliens it, *Cum pertinent.* except forty acres of Land, the Advowſon paſſeth as appendant, by the ſame reaſon it ſeemeth, if he alien forty acres of land *Cum pertinent.* except the Mannor, the Advowſon paſſeth not, 14 Ed: 3 *eſtopple* 166: 5 Ed: 3 *fol:* 66 *Livery* 7:

Note that one Advowſon may be appendent to another, 24 Ed 3 *fol.* 30 *Quare impedit* 13:

Finch ſaith, That if a man grant an Advowſon in groſſe with an acre as appendant, and he preſents at the next avoidance, that hee may make his Title as appendant or in groſſe at his election, &c: 43 Ed: 3 *fol:* 14: *Quare impedit* 135:

XLII. *How a thing appendant may be made diſ-appendent, and by what Act.*

A Man diſſeiſed of a Mannor, to which *&c.* acknowledgeth a Fine *ſur* Releaſe of the Mannor, and of the Advowſon to the Diſſeiſor, who render the Mannor *Cum pertin.* to the Diſſeiſee, and it was holden that the Advowſon paſſed not by the render, becauſe it is not mentioned, and now it is not appendent, and that it paſſed not by the releaſe without being mentioned, for the ſame cauſe, 12 Ed: 1: *Itin. Grant* 78. 18 *lib: Aſſiſe p* 2.

A man ſeiſed of a Mannor, to which, *&c.* gives the Mannor in Taile, the Advowſon remaines parcell of the Reverſion; but if afterwards he grant the Reverſion to the Donee in taile, the Advowſon is now in groſs The ſame Law is, if he give the Advowſon firſt in taile, and after gives the Mannor in taile to the ſame perſon, 44 Ed: 3 *fol:* 16: *Quare impedit* 137. But ſee contrary to this caſe, 38 H 6 *fol:* 43: *Grant*, and note the reaſon in *Littleton* in jointenancy, that by Leaſe of the one joyntenant to a ſtranger for life, the Reverſion is ſevered.

The

The King grants the Wardſhip of the Mannor of *D.* to *B.* without ſaying *Cum pertin.* if the Grantee preſent as Guardian of this Mannor to the Advowſon appendant to the Mannor of *S.* he is eſtopped to ſay, but that it is belonging to the Mannor of *D.* and then it paſſeth not, becauſe it is not named, 24 *Ed.* 3. *fol.* 30. *Quare Imp.* 12. *&c.*

Diſſeiſee of a Mannor preſents to an Advowſon, where he could not enter into the Mannor, and good; So after his entry into the Mannor, although that the Diſſeiſor hath preſented before *per Fitz. fol.* 36. 33 *H.* 6. *fol.* 37. But the Diſſeiſee of a Mannor may not occupy Common appendant, becauſe it cannot be ſevered, 19 *H.* 6. *fol.* 33.

XLIII. *Where Tenant by ſufferance may be, and who ſhall be ſaid to be Tenant by ſufferance.*

ONe made a Feoffment of all his Lands in *D.* except one Chamber, and afterwards makes him an Eſtate alſo in the Chamber, and died in the Hall, and his Heir brought an Aſſiſe, and was barred, becauſe the Father claimed nothing in the Hall but at the ſufferance of the Feoffee, ſo no diſcent, otherwiſe it ſhould have been if he had entred without his aſſent or claim, *&c.* 11 *Ed* 3. *Aſſiſe* 86.

But the entry of the Father by the conſent of his Son Infant, and his Feoffee, is a Diſſeiſin becauſe the Infant cannot conſent, 11 Ed. 3. *Aſſiſe* 87. 13 Ed. 3. *Aſſiſe* 92.

The Husband leaſeth the Land of his Wife for ſixteen years to *S.* who dieth, *P.* his Heir enters, claims the Term, and takes to Wife *K.* and dies within the term, the firſt Wife (her Husband being now dead) would enter, *K.* would not ſuffer her, wherby ſhe recovers againſt *K.* as the firſt Diſſeiſor, for by denying of her entry, the Diſſeiſin began, and the entry of the Heir before was no Diſſeiſin, becauſe he claimed nothing but the Term: So Tenant by ſufferance, and his dying ſeiſed is no diſcent, 11 Ed. 3. *Aſſiſe* 88. But if no Leaſe had been made, and the Heir, or any other had entred claim a Leaſe, or Wardſhip, I may have an Aſſiſe againſt him at my pleaſure, or may admit him Leſſee or Guardian. 28 *lib. Aſſiſe p.* 11: *Aſſiſe* 264. and if he demiſe to T. I ſhall have an Aſſiſe on account againſt T. ſo a diſſeiſin at my election.

A Diſſeiſor enfeoffeth his ſon, and takes the profits in the Aſſiſe, the Infant ſhall be named, for he ſhall be intended to take the profits according to the Feoffment, if he diſclaime in the Land, if it be not proved that he took them to his own uſe, 13 Ed. 3: *Aſſiſe* 92. 8 Ed. 3. *fol.* 64. 16 *lib. aſs. p.* 9. *Aſſiſe* 207. The entry of the Father is a Diſſeiſin if he claim *&c.*

If Tenant by ſufferance alien in fee, both are Diſſeiſors, *Ita quod vivente altero*, &c. ſo of a Termor or Guardian, 8 E. 3 *fol.* 64 *Aſ.* 149. 28 *lib. Aſ. p.* 11: 10 E. 4 *fol.*

Leſſor

Leſſor enters by conſent of the Leſſee, who removes his Goods, this is a ſurrender, but if he enter without his aſſent, this is a Diſſeiſin, 8 *Ed.* 3.*fol.*74.*Aſſ.*146.

If a Termor hold over his Eſtate. *Huſſey* ſaith, that he is Tenant of the Fee, becauſe he is in by wrong, but he is no Diſſeiſor becauſe he entred by Title, and therfore diſcent ſhall not take away the entry, 22 *Ed.* 4. *fol.* 38. and therfore there he ſhall not traverſe the dying ſeiſed in fee, *vide* 11 *Ed.*3 *Aſſ.*88.

If Tenant *pur autre vie* holds in after the death of *Ceſtui que vie*, he is Tenant in the fee, and the Writ againſt the Leſſee ſhall not abate by the death of *Ceſtui que vie*, ſo he is not Tenant by ſufferance, but not a Diſſeiſor. So *Watſon*, thought of another Termor that he is Tenant in Fee, 18 *E.*4.*fol.*25.22 *Ed.*4.*fol.*38.9 *Ed.*4.*fol.*8.

Leſſor at Will dieth, the Leſſee paies the Rent to the Heir, this is void, and he is not but Tenant in ſufferance, 21 *H.*7:*fol.*38.

XLIV. *Who is Lord of a Town, and in what place he ſhall make his Pound.*

HE is not Lord of a Town, who hath the Town in poſſeſſion, but is Tenant, and he is Lord of whom the Town is holden, and if there be divers Meſnes, every one is Lord of the Town,22 *H.6. Preſcription* 10.

If one diſtrain for Rent or Services of his Tenant in Fee for life, or for years, he ſhall not make a Pound in the ſame Land, but he ſhall where he diſtrains his Tenant at will,and it determines his Eſtate; But for Damage feaſant a man may make his pound in the ſame Land, 14 H. 7. *Avowry* 263. So note, Avowry good upon a Tenant at will, or a Copyholder for Rent,H.6.*R.*2. *Avowry* 86.

XLV. *Avowry for Frank-fold.*

PReſcription to take Sheep by night, which feed by day for foldage, is good, 5 H.7.*fol.*9.*Preſcription* 21.for manuring the Land.

XLVI. *What ſhall be ſaid to be Service.*

A Tenant was bound to find a houſe for the Lord for keeping of his Court from three weeks to three weeks, and it was held to be Service,*Temp.Ed.*1.

One

One held to find two ſhillings to the aid of the Sheriff yearly, and two ſhillings to the keeping of the Caſtle of *Rocke*, and it was held to be Service, although it ſhall be done to a ſtronger, and the Avowant ſaid not that he is charged therwith, 16 *Ed.*3. *Avowry* 93.

One held by incloſing a Quick-ſet here with a Pale, 32 *Ed.*1. *Avowry* 245.

XLVII. *Avowry for a Diſtreſſe taken in the high Street, or out of his Fee.*

Diſtreſſe taken in the high Street ſhall not abate the Avowry, but he is put to an Action upon the Statute 11 *R.*2.

XLVIII. *Tenure by theſe words, Rendring Rent for all Services, and doing to the chief Lords Services due, or to hold of the chief Lords.*

A Feoffment rendring a penny for all ſecular Services and demands, *Et faciend. Dominis ſervicia debita*, here he holdeth of the Feoffor as he held over, *&c.* But if the Feoffee be diſtrained by the Lord Paramount for any ſervice of the Feoffor, which lye which he ſhall have in payment, he ſhall not have a Writ of the Meſn, if they be to be done by another in proper perſon, *&c.* So by theſe words, *Faciend. &c.* he is not bound to pay the Service to any but to the Lord next Paramount of his Feoffor, *quære*, and here it was agreed, if the next Lord releaſe to the Meſn to hold by leſs Services, *&c.* the Feoffee ſhall have the advantage and ſhall hold of him but as he held over, 49 *Ed.*3. *fol.*10. *Account* 44. The ſame Law is of a Gift in tail made now by ſuch words, 2 *Ed.*3. *fol.*33. *Avowry* 170. 3 *Ed.*3. *fol.*12, *Avowry* 90. *vide* H.12.H.3. *Wards* 152. *hic C. vide* 31. *lib. Aſſ.*P.30.25 Ed,3 *fol.*46.13 Ed.3. *Warranty* 92.

Feoffment before the Statute of parcell of a Mannor to hold of the chief Lord, and yeilding to the Feoffor Lord of the Mannor two ſhillings, now he holds of the Feoffor, and not of the Lord, 22. *lib. Aſſ* P.53.

Gift in tail, *Tenend. de capital. Dominis*, this is void, and he holds of the Donor, 2 Ed.4. *fol.*6.4 H.6. *fol.*20.45 Ed 3. *fol.*27. *vide Herle* ſaid, that the Lord ſhall have Ward by theſe words, and the Donor the Eſcheat, 6 *Ed.*3. *fol. Eſtoppell* 121,

It ſeems the King may chooſe whether he will have the Donor or the Donee to be his Tenant, but upon a Gift in tail, this remainder in Fee to hold of the Lord, this is good, 4 *H.*6 *fol.*20.45 Ed.3. *fol.*27.

Gift

Gift in Frankmarriage, *ſalvo forinſeco*, and afterwards grants the ſervices, ſaving the Reverſion, the Grantee ſhall have the Ward, *Non eſt lex*. 26 *lib*. *Aſſ*. *P*. 66.

One renders by Fine for life to hold by the eleventh part of a Knights fee, the remainder of parcell to a ſtranger to hold by the twentieth part of a fee, the remainder of another parcell in tail to a ſtranger, to hold of the Donor *& faciend.* to the Lords ſervices due for the Donor, and the firſt reſervations are gone, for *Wilby* ſaith, that Tenant for life, and he in remainder may not hold by ſeverall ſervices, and ſpecially by divers eſcuages, 19 *Ed* 3. *Fines* 71.

Feoffment *tenend. quiete & libere faciend. ſervic. forinſecum quantum pertinet*, now he holdeth of the Donor, but if he had ſaid *faciend. forinſecum cap. Dom.* he had had held of the chief Lord &c. 12. *H*. 3. *Wards* 152. *vide ſupra A*.

An Abbot was enfeoffed to hold by certain ſervices *pro homagio*, and all demands, *ſalvo tamen ſcutagio quando currit*, yet the homage and Knights ſervice is taken away by the firſt clauſe, & it ſhall not be revived by the latter, which is contrary and cannot ſtand, 19 Ed. 2. *Avowry* 224. but afterwards he ſhall do ſcutage, which is ſocage, for this agreeth to the premiſes, but if it had been ſaid, *ſalvo forinſeco*, this is Knights ſervice in the firſt caſe.

Tenant in Socage grants in Tail, rendring 12 d. for all ſervices, *ſalvo forinſeco &c.* and there it was held, that by this laſt clauſe he ſhall hold in Knights ſervice, if the Land be ſo holden over mediately or immediately, 26 *lib*. *Aſſ*. P. 66. *Grants* 75. 8 Ed. 3. *fol*. 67. *Avowry* 154. *vide* 25 Ed. 3. *fol*. 10. 5 Ed. 3. *fol*. 10.

Note the difference before of Feoffment *pro homagio* &c. *ſalvo ſcutagio*, there he ſhall pay no eſcuage, but that which is ſocage, and where it is ſaid, *ſalvo forinſeco*, it is Knights ſervice, if the Land be ſo holden of any one, 19 Ed. 2. 26 *Aſſiſe*, 8 Ed. 3. & 31 *lib*. *Aſſ*. *P*. 15. & 30. 13 Ed. 2. *Avowry* 89.

Land given to hold by rent for all ſervices *ſalvo forinſeco* &c. *et ſi predicta terra releviari debeat pro dimidia marca tant. releviar. pro Wardis, maritagiis, et ſingulis exactionibus*, in this caſe no wardſhip nor relief is to be paid, 31 *lib*. *Aſſ*. P. 15.

Feoffee to hold by 6 d. for all ſervices, *et ex illis* 6 d. *ſolvi debet ſcutag*. this is but Socage *Diviſ*. 29 *A*. So Feoffment to hold by 2 d. and eſcuage is Socage, 3 *lib*. *Aſſ*. P. 30. *ſupra D*. 19 Ed. 2.

Feoffment to hold by homage for all exactions, or by Homage Fealty and eſcuage for all ſervices and demands, it ſhall not exclude any ſervice incident to Knights ſervice, but from ſuit of Court, and the like, 14 *H*. 4. *fol*. 2 *Avowry* 100. &c.

Land given in Tail for homage and ſervices to hold by two marks for all ſervices, exactions, and demands, *ſalvata Secta curiæ*. *Hulls*, he holds by Fealty and homage, and the ſervices reſerved, but the relief is taken away

away by the word, demands. *Thirn.* alſo thought that Homage is taken away by the word, demands, which comes after, but if he had ſaid to hold by 2 d. for all demands, *ſalvo homagio* or *forinſeco*, he ſhould have had theſe ſervices, becauſe reſerved after the word, demands, 13 *R.*2. *Avowry* 89. but it ſeems that the word (for all demands) excludes onely the ſervices not compriſed in the deed, 14 *H.*4. but there (*tenend.*) refers to all ſervices in the deed, but not in 13 *R.*2. & 13 *R* 2. he ſhall have ward and marriage, *Quere* for he ſhall not have relief, *ibidem.*

A Prior gives Land to *W. pro homagio & ſervicio ſuo, reddend. ſucceſſoribus ſuis*, 2 s. *pro omnibus ſerviciis, exactionibus & demandis, ita quod le Prior nec ſucceſſ. ne demander niſi homag. et* 20 s. &c. it was holden that the heir need not do homage by theſe premiſes, nor the aſſigne of *W.* when the deed goes further, *Ita quod* &c. *niſi homag. et* 20 s. it makes the homage perpetuall, ſo the premiſes alter by the concluſion, 8 *Ed.* 3. *fol.* 67. *Avowry* 154.

Feoffee before the Statute rendring Rent, without ſaying to whom &c. he ſhall hold of the Feoffor, 8 *Ed.*3. *fol.*53. *Aſſ.*147. but if nothing be reſerved, nor no Tenure expreſſed, he holds of the Lord Paramount. So if he ſaid *reddendo* 2 s. the Feoffor ſhall have it as rent ſecke, 33 *Ed.*3. *Annuity* 52. *Laicon* agreeth that *reddendo* is not a word to make a tenure, 21 *Ed.*4. *fol.*62. but this is not Law, for a Feoffment *reddendo* 2 d. to the Feoffor, *et fac.* to the Lords &c. he holds of the Feoffor onely, 49 *Ed.*3. *fol.*10. and *Perkins f.* 121. and holds of the Feoffor where no tenure is expreſſed, 3 *lib. Aſſ. P.*8. 45 *Ed.*3. *fol.* 15. *Ceſſ* 15.

Feoffment to hold of him by &c. during his life and doing *capit. Dominis* ſervices due &c. after his death to hold of the chief Lord for ever, it is held that he ſhall hold of the Feoffor during his life, and afterwards of the Lord &c. and note it was after the Statute of *Quia emptores terrarum*, 2 *Ed* 2. *Avowry* 185.

Feoffment to hold by ſervices due, is of the Feoffor, 44 *Ed.* 3. *fol.*45.

XLIX. *Where the King may make a Feoffment to hold of of himſelf.*

ONe holds a Barony of the King, and alienes parcell before the Statute to hold of him without licenſe, the King ſeiſeth, and renders again to hold of himſelf &c. how this ſhall be held, *vide* 20 *Ed.*3. *Aſſiſe* 122, 124.

L. Where the Tenure of the King ſhall be in chief, where not.

LAnd holden within the Cinque ports holden of an Honor being in the Kings hands, comes to the King who ſeiſeth it, and leaſeth it to *S.* now in his hands, it is of the nature of the Cinque ports, becauſe eſcheated to the King but as parcell of the Honor, 49 *Ed.*3 *fol.*24. *Jurisdiction* 55. So not holden in chief of the King, and yet all the mean Seigniories are extinct, *Vide grant le Roy. Diviſ.*24.47 *Ed* 3.*fol.*21.

If Land holden of any Honor comes to the Kings hands who alienes it, it is held of him by Priority, although by poſteriority before, but he ſhall not have Prerogative of Lands holden of other Lords thereby, which proves that the Mannor is not held of him in chief, but as of the Honor &c 5 *Ed.*3.*fol.*4.*Prerogative* 20.

If an Honor come to the King by common eſcheat, whereof a Mannor is held in Knights ſervice, now this Mannor is held of the King in Knights ſervice as of his Honor, and not in chief, 5 Ed. 3. *fol.* 4 and 5. *Prerogative* 20. *Quare* if it come by forfeiture, 26 *lib. Aſſ. P.* 57. *vide Diviſ.* next following.

All Lands coming to the Kings hands by forfeiture of Treaſon are held in chief, 46 Ed.3 Petition 18. & 19.

L I. *Where the King ſhall be ſeiſed in right of his Crown by forfeiture, and where otherwiſe.*

THe King ſeiſed the office of Chamberlain for forfeiture, now he had it in right of his Crown, for this office, and the office of the Marſhall are *de Jure Coronæ*, and by the ſeiſure he defeats mean intereſts, although the officer were Tenant in tail thereof, 11 Ed.4. *fol.* 1.*Grants* 25.

If a Mannor which hath a Franchiſe come to the King by purchaſe or forfeiture, whether the Franchiſe be extinct, *vide* 43 *lib. Aſſ. P.* 10.

One holds a Mannor of an Honor, and dieth, his heir being within age, who makes agreement with the Lord of the Honor, and enters at his full age, afterwards is forfeited to the King for Treaſon, now it is holden, that the Mannor ſhall be held of the King in chief, by *Watſon*, but the book is not ſo, but that he being within age ſhall anſwer the King of the iſſues &c. but if the Mother were Tenant in Dower of a parcell and dieth, and he was alſo ſeiſed of other Land in fee after the forfeiture, and they were ſeiſed untill the heir ſue his livery, 26 *lib. Aſſ. P.* 57. *Livery* 33, and it ſeems that the Mannor ſhall not be holden in chief, but if the Mannor and the Honor come to the King for Treaſon, he ſhall be ſeiſed

in

in jure corone of both, and the one not holden of the other, 6 Ed. 3. *fol.* 32 *Diviſ.* 41. And if the Honor onely come to the King for Treaſon, and the Mannor is of the nature of the Cinque ports, it ſhall remain in the ſame, 49 *Ed* 3. *fol.* 24. which it ſhould not be, if it held in chief, for if Land holden in chief be in the Cinque Ports or in *Wales*, the Kings Writ runs not there of them, and are not pleadable there &c. as where a Caſtle or County there comes to the King for Treaſon, and he giveth it in tail it was pleaded here, 33 *Ed.* 3. 3. *Jurisdiction* 23.

Certain Lands found to be holden of the King, as of his Honor of *S.* by Knights ſervice, and that he hath aliened upon condition, the other traverſeth, and the alienation found without Condition, but no *Ouſtre le main* till tried. If the Honor were an ancient demeſne of the Crown, for then he ought not to aliene without licence, but if the Honor come by common eſcheat, the Mannor is holden in Knights ſervice, and may be aliened without licence, 42 *lib. Aſſ. P.* 6. *Traverſe* 24.

See well of this in *Grants le Roy Diviſ.* 24.

Tenure to find a man in war whereſoever within the foure ſeas, is grand Serjeanty, and if he cannot find another, he ought to go in his own perſon, and relief here ſhall be to the value of the Land by the year, 11 *H.* 4 *fol.* 7. *Bar* 184. Se more *Wards Diviſ.* 40.

LII. *Where a man may plead in abatement, and may alſo avow, and how conclude,* Vide Replevin Diviſ. 2.

AVowry was for fealty in another Town, and the plaintiff was compelled to maintain his Writ, although that he concluded in Barre, 31 *Ed.* 3. *Avowry* 110. *Vide Diviſ.* 21.

LIII. *Avowry for fifteens.*

THe Collector appointed Dozener of the Town to diſtrain for fifteens, 20 *Ed.* 3. *Avowry* 130. and he avowed it without ſhewing his warrant, *P.* 12. *Ed.* 3. *Mrans faits* 65.

LIV. *How an Avowry may be made of beaſts delivered by* Wythernam, *and how in the ſecond deliverance.*

REplevin of kine, the Defendant avoweth the taking of a heifer, and ſaith, that the plaintiff was non ſuit in another Replevin, and theſe

kine remain with him in lieu of others by *Wytbernam*, and compelled to anſwer to the ſuppoſed taking, for the Avowry is underſtood of the firſt taking, 2 *Ed.*3.*fol.Avowry* 171.

In a Replevin of three heifers, the Bailiffe acknowledgeth the taking of three oxen; and the plaintiff was non ſuit in a Replevin, and for the three oxen claimed, the heifers were delivered unto him &c. It was holden that the plaintiff ſhould declare upon the three oxen firſt taken, 33 *Ed.*3.*Avowry* 256, *vide Replevin Diviſ.*10. and it was ſo held *per curiam*, 13 *Ed.*3.*Replevin* 37.

LV. *How one County may be made parcell of another.*

BY Commiſſion *de perambulac. fac.* at the ſuit of the King, Land in one County, allotted to Land in another County, yet it is the ſame Town which it was before, and *Wilby* ſaith, that it belongeth to the King to limit certain Counties, and if this bind not all the Counties they will never be certainly known, yet an Abbot brought a Writ, and he was not eſtopped to ſay that the Land was in another County by ſuch allotment of Record, *Quære*, but perambulation made by conſent of the parties, ſhall bind them and their heirs, *&c. M.*29.*Ed.*3 *fol.* *Eſtoppel* 278.

Tenure to pay 12 d. or a pair of Spurres, it is a good plea that he hath paid the ſpurres, if he diſtrain for the 12 d. *T.*43 *Ed.*3. *Barre* 194.

BARR.

I. *Where receit of Homage or Fealty ſhall be a Barr of Land, and where not.*

IT was ſayd, If the Diſſeiſee taketh Homage of the Diſſeiſor, but for his life, he ſhall be barred of Aſſiſe: But *A.* his Heir ſhall have a good Writ of Entry upon the ſame Diſſeiſin, made to his Anceſtor, *Fitzh. Quod nota*, 17 *lib. Aſſiſe P.* 3. and *Hil.* 17. E. 3 *fol.* 6. *et vide* agreeing thereto, where in a Writ of Entry in *le poſt*, upon Diſſeiſin made to the Grand-father, he alledged acceptance of Homage by the Grand-father and Father of the Demandant, and tendred it to himſelf, *& non allocatur*, whereupon he alledged a Deed of the Father of confirmation, and at iſſue upon the Nonage, *&c. Temp*: Ed. 1. *Aſſiſe* 423. *vide* that the elder ſon ſhall not have the Land given by the Father to the middle ſon in fee, to hold of him by Homage, if he dye without iſſue after that he hath done Homage to the elder, but the youngeſt Son ſhall have it, but the iſſue of the eldeſt Son which was born at the time of the Homage accepted, ſhall not be eſtopped thereby, but if he were not then born, he ſhall never have the Land, by the Juſtice *Temp.* Ed. 1. *Avowry* 235.

A woman joynt grantee with her husband of a Signiory being now ſole, takes Homage of the Feoffment of her Husband, of the Tenancy whereof ſhe hath Title of Dower, whereupon ſhee traverſed it, *P.* 11. Ed. 3. *Dower* 63.

He which hath taken Homage, ſhall never avow for releif, *P.* 15. E. 3. *Releif* 5.

The Tenant voucheth a Prior, and binds him by this, that his Predeceſſors have received his Homage for the ſame Land, and that he hath tendred it to his Prior, and he was ouſted of the Voucher; 47 *H.* 3. *Voucher* 270.

And where one ſhall vouch the Heir for ſuch cauſe, he may diſclaime in the Homage, and the voucher over, 47 *H* 3: *Voucher* 271.

An Abbot brought a Writ of entry upon Diſſeiſin to his Predeceſſor, and

11 E. 3. *Abbey* 9. *If a Perſon makes a leaſe for life, and dieth, and his Succeſſors accept fealty of the iſſue, he ſhall not avoyd the Leaſe during his life by his receite.* vi. 11 E. 3. *Abby* 9 *before contrary.*

and was not concluded by acceptance of Fealty, for *Hill* ſayd that it is not *Juris utrum*, *H.* 12. *Ed* 3. *Bar* 252.

If the eldeſt Son be attainted in the life time of his Father, and hath a Charter, and after the Father dyeth, ſo that the Lord is to have the land by eſcheat, yet if he accept the ſervices of the eldeſt Son, as Fealty and Rent, he is concluded, and the ſame ſhall retain the Land, *Tr.* 131. *Ed.* 1 *Diſcent* 17.

In a Writ of Right after the grand Aſſiſe choſen, the Demandant confeſſeth that he hath received Homage of the Tenant for the ſame Land, whereupon the Aſſiſe was diſcharged, and awarded, that the Tenant and his Heirs ſhould hold the Land acquitted, not the Demandant and his Heirs, 5 *H.* 3. *Item Droit* 66.

4 E. 3. 22. By Acceptance of the rent and ſervices by the hands of the feoffee, the Lord ſhall not be chaged of releif due before 13 E. 3 guard. 154. 32 E. 3. 3 F. N. 142 Lord and Tenant by Knights ſervice, The Tenant enfeoffs his ſon, & dieth within age by colluſion, if the Lord accept the ſervices by the hands of the Feoffee, he ſhall loſe the ward-ſhip, becauſe the Lord by acceptance of the Feoffee for the Tenant, hath waived the benefit of the ſtat. of Marl. c. 6. & ſo he hath proved the colluſion & ſhall loſe the wardſhip of the ward.

If the Lord hath accepted Homage of the Feoffee of his Tenant, he ſhall never after be received to an Averment that the Feoffment was made by Colluſion to re-enfeoff the Heir at his full age, for by the acceptance he hath affirmed him his Tenant, *&c. Tr.* 32. *Ed*, 3. *Wards* 33.

Priſot ſaith, that the Lord ſhall not loſe the Wardſhip of the Heir of the Feoffee of his Father, of whom he hath received Homage in the life of his Father, for this is Colluſion apparant, although that the Feoffment be made *Bona fide* by him, *P.* 33 *H.* 6. *fol:* 14. *Colluſion* 36.

Berry ſaith, That Seiſin of ſervices, doth not take away the Lords Eſcheat, if he accept not Homage of a new Tenant, *&c. M.* 11. *Ed.* 2. *Eſcheat* 13.

If the Lord accept the eldeſt Son, Feoffee of his Father for his Tenant by ſervices received, *viz.* Fealty, *&c.* in the life of his Father, he ſhall be concluded from having of him after the death of his Father, although he be yet within age, *Non ſic* by acceptance after the death of his Father, for this the Grand Charter willeth, *Cap. P.* 31. *Ed.* 1. *Wards* 155.

The Tenant holdeth by Fealty, and 20 *s*, Rent, and enfeoffeth a ſtranger to hold of the Lord by Fealty and 4 *d.* the tender of the 4 *d.* is void, but if the Lord accept it, he ſhall be concluded of all that was due before, *P.* 7. *H:* 4: *fol:* 14: *Avowry* 51.

But in a Writ of entry *Sine aſſenſu capituli*, acceptance of Fealty is no Bar, becauſe they may have Homage which another cannot have, and therefore Fealty received, ſhall conclude him, *&c.* And Juſtice *Thorton* ſayd, That acceptance of Fealty and Service hanging the Action is a Barr of Action, *&c. Temp.* Ed: 1: *Juris utrum* 13.

Diſſeiſee ſhall be bound to avow upon the Diſſeiſor, of whom he hath accepted Homage or Fealty, but acceptance of Rent ſhall not Bar him to avow upon the Diſſeiſor afterwards, *per Paſton*, 21 H. 6. *fol.* 24.

II. *Where receit of Rent ſhall bar a man of Dower, and where not.*

HUsband and Wife give the Land of the Wife in taile to a ſtranger, rendring rent, and ſhee accepts the Rent after the death of her Husband, and thereby ſhall be concluded to defeat this gift afterwards, *per Aſcue and Newton: Paſton contra*, and ſayd, that it had been oſtentimes adjudged in the Books, that ſhe ſhall not be barred, *&c.* H 21: H: 6: *f:* 24: *Cui in vita*, 1: *Newton* ſaid there, that if the Husband alone did leaſe the Land of the Wife, that ſhe could not have the Rent reſerved, and therfore ſhe ſhould not be barred by the acceptance, *&c.* Payment of Rent granted by Tenant in taile, or of that which was reſerved to the diſcontinuance upon the Eſtate by him taken back again, ſhall not bind the Iſſue; but that he may well retain it after himſelf had payd it, becauſe the Eſtate or Grant determined by *Remitter* of the iſſue, *&c.* 21 *H.* 6, *fol:* 24. *Cui in vita.*

26 H. 2. *Husband and Wife, ſeiſed in the right of his wife make a Feoffment in fee, the Feoffee by Indenture covenants, that he and his heirs will pay to the Feoffee and his wife, and the ſureties of them; the husband dies, and and the wife accepts it not, it did not barr her in* Cui in vita, *for ſhe accepted it as an annuity, See the difference where the acceptance ſhall bar the wife, where not,* 6 H. 7. 3. 11 H. 7. 13. 15 E. 4. 17. 21 H. 6. 15 21 H. 7. 38. 15 E. 4. 78.

But ſee *Moyle contra*, Where the Husband alone doth diſcontinue the Land of his Wife rendring Rent, and ſhe accept it, that ſhe ſhall be barred of the Land, and ſaid, If my Father diſſeiſe the Father of my Mother, and ſhe and her Father dye, and my Father alieneth, rendring rent, and dyeth, and I accept the rent, this is a barr of the Land, to which the Serjeants agreed, *M:* 39: H: 6: *fol.* 27. *Cui in vita* 2.

Vi. 1 H. Dyer 91. C. 4 *part* 1. *Acceptance of Land which is not in demand is no barr of dower.*

If Husband and Wife before the Statute of 32 *H.* 8. *make a Leaſe by word, rendring Rent the Husband, dies, the wife accepts the rent, vide* 1 *Mar.* Dyer 91. *if her acceptance do affirm her Leaſe, it ſeems here it doth not, but vi.* C. 4. *part* Vernons *caſe,* 21 H 6. 24. 4 *M.* Dyer 147 33 *Eliz. in* Moſley and Gilberts *caſe, and afterwards,* 36 *Eliz. adjudged, the Leaſe was good by word, and the acceptance of the Wife did make the Leaſe good.*

Acceptance of rent by the iſſue in taile of the Leſſee of his Father, ſhal barr him of the Land, H. 21. H, 6 *fol* 15. *A.*

The Lord accepts Fealty and rent of him who was outlawed of Felony in the life time of his Father, *&c.* and is thereby barred of the Land which he ought to have by eſcheat, *Tr.* 31. *Ed.* 1. *Diſcent*, 17.

In Aſſiſe, the Tenant ſaid, that the Plaintiff accepted rent of him for the ſame Land, depending it, and the opinion was, that this is not but to the Aſſiſe, and in truth he had let the Land rendring the rent, with reentry for non payment; and ſo for ſome waſt done, wherefore he confeſſed the acceptance of the rent, and ſaid, he did re-enter of the Waſte, done

done &c. and good. So it ſeems that he could not maintain the Aſſiſe upon he entry for non payment, if he himſelf accept the rent pending it, &c. 45 *lib. Aſſiſe p:5: eſtopple* 142.

A Commander as Officer of a Prior, leaſed Land, and takes a Fine for it, and the Prior accepted the rent reſerved, and afterwards brought an Aſſiſe againſt the Leſſee, and recovered, for it was ſayd by the Court, that a Bayliff nor Steward, &c. cannot by any uſage leaſe the Freehold &c. but well by Court Roll, &c. *M.* 19. *Edw.* 3. *Feoffments & Faits* 68.

III. *Where receipt of parcell of the Rent ſhall barr him of the reſidue.*

IF he who hath cauſe to have all the land by *Cui in vita*, aſſigneth parcell to the wife of the Feoffee of her husband in Dower, thereby ſhee accepts the reſidue and barrs her ſelf of that which ſhee hath aſſigned to the wife, by *Herle*, 7 *Ed.* 3: *fol.* 62. *Cui in vita* 13. *Parnells caſe.*

In *Cui in vita*, the Tenant ſayd, That ſhe hath accepted the third part for Dower, and hath releaſed of all actions and demands, and becauſe he could not have both pleas, he held himſelf to the releaſe, *M.* 10. *Ed.* 3. *Double plea* 8. But ſee where the Husband alieneth the land of his wife, and took it back to them in taile, and dyeth, the Lord aſſigns the third part to the Wife for Dower, and gives her a 100 *s.* to be content; and ſhe brought an Aſſiſe of two parts, and recovered, notwithſtanding the acceptance; and held the 3 part in her ancient right, 17 *l. Aſ. p.* 3: *Aſſ.* 208. 17 *Ed.* 3. *fol.* 6. But ſee there, if ſhe recover Dower, it ſhall be a barr to the reſidue, it is a good barr in *Cui in vita* that the Demandant hath Dower depending againſt him for the third part of the ſame Tenements, 8 *Ed.* 3. *fol.* 12. *Writ* 444.

vi. C. 4. *part, Vernons caſe, it was holden in this caſe no Bar.*

In a *Scire facias* for execution of Land recovered in Dower, the Tenant alledgeth that after &c. ſhe had accepted of ſuch Land in allowance of all her Dower of the ſame perſon againſt whom &c. And notwithſtanding that execution was awarded, for hee ſhall not have the averment without a ſpecialty: Alſo the Demandant alledged how ſhe had right to the Land by a fine acknowledged to her husband and her, &c. *P.* 31 *Ed.* 3. *Scire facias* 99.

IV. *Where*

IV. *Where acceptance of other Land ſhall bar a man of Land to which he hath right.*

vi. C. 4. part 1. Vernons caſe. acceptance of other land then of the land in demand, ſhall not barr a woman of her dower.

IN a *Sur cui in vita*, in the *Per* and *cui*, The Tenant alledgeth an exchange of the husband, and that the Demandant agreed, and is now ſeiſed of the Lands given to his father, *& non allocatur*, without ſhewing a ſpecialty, becauſe the Tenant is not privy in bloud. *P. 2. Ed. 2. cui in vita* 17. But the party or his heir may well plead the agreement to the exchange againſt the wife or Heir, and it ſhall be a good Barr, *per Newton* 21 *H. 6. fol.* 15. *A* and to this agrees, 8 *Ed. 2. it n, Cant.* although the wife was not ſole ſeiſed of the Lands given in exchange for her land, for which cauſe ſhe ſhewed a Charter, by which the Land was given to her husband, her ſelf, and a ſtranger, and the Deed ſpeak nothing of the exchange, yet the Tenant averred, that ſhe is ſeiſed of the lands given in exchange, by force of the exchange; and they were thereupon at iſſue; for it was ſaid, That ſhee being a ſtranger to the Deed ſhewed by the Wife, ſhe ſhall not be bound by it, the Writ was in the poſt, *&c. cui in vita* 28.

The iſſue in taile ſhall be barred in a Formedon, if he hath agreed to the land taken by his father in exchange for that which he demands: So of the wife, 3 *Ed.* 3 *fol.* 19. *exchange* 11. 14 *H.* 5. *fol:* 3. *Formedon* 5.

But a man ſhall not have exchange againſt a record which doth not prove it, as if the Anceſtor of the Demandant, gave to his anceſtor the land demanded, for releaſe by him made of other Land, where the fine proves the gift, and ſpeaks not of the exchange, ſo no conſideration appears, for which he ſhould have the one land and the other, *Trin.* 16 *Edw.* 3. *exchange* 2. and 3 *Edw:* 3, *fol*, 19.

Green ſaid, That if Tenant in taile releaſeth to his Diſſeiſor who gives him other land for this, into which the iſſue entreth, &c yet he ſhall recover alſo the land intailed, becauſe he claimeth it by a title paramount, *&c.* So if Tenant by the curteſie maketh ſuch releaſe, and for it taketh other land in fee, and the heir accept thereof, yet he ſhall recover the other land by Mortdanceſter, of the ſeiſin of his mother, becauſe hee hath another Title by her, *Tr.* 16. *Ed.* 3. *exchange* 2.

Exchange binds an Infant if he agree at full age, and occupy the Land afterwards, *&c. M.* 4. *Ed.* 2 *exchange* 3.

Exchange ſhall not be averred againſt a ſimple Deed of Feoffment ſhewed by the other party, *H.* 6 *Ed.* 2. *exchange* 12. But *vide* 3 *Ed.* 3. *itin North.* the averment diſcharged, recovered againſt a ſimple Deed by him who was a ſtranger to the deed, *ſcilicet*, the Aſſignee, and it was ſayd, he ſhall rebut the Heir in taile, although he ſhall not vouch him, and by the ſame reaſon he may plead the exchange, *Formedon* 44.

CHALLENGE.

Challenge to the Array, and to the Poles.

I. *Challenge for conſanguinity to the party, or his Sons, Daughter, or Coſin, and the forme to take his Challenge.*

IN an Aſſiſe, the Tenant challenged a Juror, becauſe he was Goſſop to the Plaintiff, and his coſin within the degrees, and the laſt point was only enquired of, *Quere* for what cauſe, 7 *H.6 fol.* 40. *Challenge* 23: *&c.*

It was held a principle Challenge to a Juror, becauſe he was coſin to the wife of the Defendant, ſo as the iſſue of the Defendant might be heir to the Juror, 8 *H.6.fol.* 15: *Challenge* 25. 21 *Edw.*4. *fol.*37. and 38.

It was held a Principall in an action by an Abbot, that the Juror is uncle to a Monk of the houſe, or brother: But *Newton* was abſent, 28 *H.6 fol.*10. *Challenge* 39: where one was alledged Coſin to a Nunn of the houſe, and the ſon of the Steward of the Abbies plaintiff *In homine replegia.* 7 *E.*4.*fol.*4:*Chal*. 54: So that he is brother to a Prebend of a Chapter in an Aſſiſe by the Dean and Chapter, for it is a good plea that the Juror is one of the Chapter, and it is a good Challenge in debt by Executors, that the Juror is Coſin to the Plaintiff, and good in an action by Tenant for life, that the Juror is coſin to him in Reverſion: And in the firſt caſe, if they have not goods in Common, their own goods ſhall be in execution, &c. And if in Treſpaſs the Defendant juſtifie as ſervant for Rent, and hath aid, it ſhall be a good challenge to ſay, that the Juror is Coſin to his Maſter, yet the Maſter ſhall loſe nothing. *M:* 21 *Ed.* 4 *fol.* 1. *challenge* 60, But coſin to him in reverſion may be well challenged where no aid is prayed, 21 *Edw.*4 *fol.*37. *fol.* 75. *vide* 9 *H.*7: *fol.* 23.

In an Action brought by the Chapter alone, coſin to the Dean, or within his Diſtreſſe, is no Challenge, but it is, where within the Diſtreſs of the Dean and Chapter, 21 *Ed.*4.*fol.*14.

21 E.4 31. B. It is a good Challenge, that the Juror is Coſin to a brother of the houſe, the Prior being Plaintiff in an attaint, ſo that the Wife of the Plaintiff is coſin to a brother there, *&c.* 34 *lib*, *Aſſ.pla.*6 *challenge* 127.

But

But in an action by a Channon or Prebend, it is no challenge that the Juror is Brother to another of the Chapter, or to the Dean, becauſe their poſſeſſions are ſeverall, 21 *Ed.*4:*fol.* 75.

He which challengeth for coſinage, muſt ſhew ho[illegible] but it is not traverſable, but ſhall be tryed only how Coſin; 7 *Ed.*[illegible]:4. *challenge* 54: But of Goſhipry, he ſhall not ſhew how, *ibidem*. So where the Plaintiff ſaith, that the Sheriff was coſin to the wife of the Defendant, the other ſhall anſwer to the coſinage, not to the conveyance; *per Yelverton*, 9 *Ed.*4 *fol.*6. Otherwiſe it is in an action anceſtrell, &c. *Sugg.* 5. but ſee where the tryors found the coſinage, and did not know how, the challenge was not good, *M.*33.*Ed.*3. *challenge* 169.

It was no challenge in an Aſſiſe, to ſay that the Plaintiff was neer to the Arch-Biſhop of *E*: and he that made the panell his Tenant; and that it was made by the deviſe and Counſell of the Arch-Biſhop, without ſaying further, that they were procured to ſay other then the truth, 12 *lib. Aſſ. p.*23.*challenge* 10.

It was ſaid, if the Plaintiff and Juror be of a linage, ſo that the Plaintiff is of the fourth degree, and the Juror in the firſt, this is a good challenge, but if they be in the fift and ſecond degree, it is no challenge, becauſe they may intermarry: Alſo Baſtardy in any Aunceſtor of the Juror after the coſinage joined, taketh away the challenge 41 *Ed.*3.*fol.*9. challenge 99. Agree of Baſtards in a Juror, *M.*6.*R.*2.*challenge* 102. 26 *H.*6. *challenge* 163. and 21 *Ed.*4.*fol.*38. and 39. *& vide* 21 *Ed.*4.*fol:*75. That Coſin of the ninth degree ſhall be a good challenge.

It was holden a good Challenge in an attaint, That the Juror was Coſin to one of the petty twelve Jurors, who is dead, becauſe the Heire ſhall be charged with the Oath of his Anceſtor, &c. 34 *lib. aſſ. p:*6: *challenge* 12.

It was though in an attaint, that the Alliance and Conſanguinity to the Plaintiff on his Mothers ſide, where the lands come on the Fathers ſide, and ſhall not diſcend to the Heir on the Mothers ſide, it is no Challenge, 40 *lib: Aſſ. p:*20: *challenge* 131: *Vavaſor* held ſuch coſinage of the half bloud to be good cauſe of Challenge. 21 Ed. 4: *fol:*37.

It is a good Challenge in an Action by a Feoffee to ſay, that he is coſin, *A ceſtui que uſe*, and if the iſſue be between the vouchee and Demandant, it is a good Challenge that the juror is Coſin to the Tenant, P. 1 Ed.4 *fol:*38. and 39.

II. *Challenge to the Array for conſanguinity of the one party, where [redacted] Monk or Citizen, in an Action by an Abbot, or Mayor [redacted] Comminalty, and ſo of affinity.*

Vide C. Lit. 157. for a rule Conſanguinity to any of the parties, affinity or alliance by marriage, is a principall challenge for favour Vide 29 b. 8. Dyer 37. Plo. Com. 425. 19 Eliz. Dyer 317.

IN an Aſſiſe the Array was challenged, becauſe made by the Bailiff, who had married the Coſin of the plaintiff, and had iſſue, this is a principall challenge, though no default in the Bailiff, 29 *lib. Aſſ. pla.* 2. *Chall.* 114. 22 *Ed.* 4. *fol.* 2. but ſee 26. *lib. Aſſ. pla.* 21. that he ought to conclude to favour.

The Array was challenged in an Aſſiſe, becauſe the Sheriff is Coſin to the plaintiff, the plaintiff ſaid, that the Array was made by ſuch a ſworn Bailiff, and the Sheriff medled not with it, but retorned the parcell, yet the array was quaſhed, but *Burton* ſaid afterward, that the Array was good, 31 *lib. Aſſ. p.* 7. *Challenge* 149. but where the ſon of the plaintiff was Steward of the Franchiſe, and one *T.* Bailiff thereof (not removable by the Steward) made the Array, this was held good, 12 *lib. Aſſ. P.* 12 *Chall.* 9. &c.

1 M. Dyer 91. It muſt be alledged that he was Coſen tempore arriamenti facti, otherwiſe it is not good. Vid. C. Lit. 156 b. E. 6. Dyer 78. &c.

It is a good challenge to the Array, that the Sheriff is coſin to the wife of the plaintiff, 12 *H.* 6. *Chall.* 159. *&c.*

In an Aſſiſe by a Prebend, it is no challenge to the Array, becauſe made by the Bayliff of the Dean and Chapter of the ſame place where he is Prebend, ſo if he alledge the Bailiff coſin to the Dean, *M.* 21 Ed. 4. *fol.* 9. *Chall.* 60.

It ſhall be a good Challenge to the Array, that the Sheriff or Bailiff is Coſin to the plaintiff, 34 *lib. Aſſ. P.* 6. *Chall.* 127. but the Coſinage is not materiall if he made the parcell without any intent of favour to the plaintiff, *P.* 21. Ed. 4. *fol.* 29. and it was the under ſheriff there, and the favourableneſſe onely inquired of, *Quare Suliard.* the Serjeant held the contrary.

In Treſpaſſe or Aſſiſe, where the Defendant ſaid, that the Anceſtor of the plaintiff enfeoffed the Mayor and Comminalty, who made a Leaſe unto him for life, ſaving the Reverſion, and the panel was quaſhed, becauſe of the people of the County, 28 *lib. Aſſ. p.* 18.

Vide 14. and 15. Eliz. Dyer 319.

The Sheriff was found Coſin to the plaintiff, but in another degree then the Defendant ſuppoſed, yet the Array was quaſhed, *P.* 19. *H.* 8. *fol.* 7. *Vide 38 b. 6.*

III. *Challenge to the Array or polles, becauſe at another time they paſſed againſt him in the ſame point, or in another action.*

AFter waſt found againſt the Husband and wife, ſhe was received and pleaded no waſt done, and the Sheriff retorned, the ſame panell that was of the former enqueſt, for which he was amerced and a new panel made, M. 7. Ed. 3. *Challenge* 7. *&c.*

In debt the plaintiff challenged a Juror, becauſe he paſſed againſt him in an action of Debt upon the ſame ſumme, which judgement is reverſed by Error, but becauſe the record, is in the Kings bench, it is not a peremptory challenge without ſhewing the Record, *H.* 33. *lt.* 6. *fol.* 1. *Chal.* 41. *vide* this is not a principall challenge without ſhewing the Record, but the Juror being examined, confeſſed that he was ſworn upon the ſame iſſue before, and it was tried by the triers, whether he were favourable, 8 *H.* 5. *fol.* 11. *Chall.* 179.

In treſpaſſe for beating his ſervant, the plaintiff challenged a Juror, becauſe in a treſpaſſe and battery, (and brought by the ſame ſervant) he paſſed againſt him, and becauſe he ſhewed not the Record (as he ought in all ſuch caſes) it was held no principal Challenge, but the favour was tried, *P.* 11. *Ri.* 2. *Chal.* 106. but in maintenance it is no Chall. for the Defendant to alledge, that he paſſed with the plaintiff in the former action, becauſe this doth not imply favour, becauſe another point, 35 *H.* 6. *fol.* 63. *Chall.* 45. and *Danby* ſaid, that it is not a principall Challenge that the Juror paſſed againſt him in an iſſue upon the ſame matter, for no man ſhall be challenged for his *Voyer dire*, 9 Ed. 4. *fol.* 16 *Chal.* 55. *vide* this reaſon alledged, 22 *lib. Aſſ.* P. 13.

A man indicted of treſpaſſe comes by proceſſe, and traverſeth the Indictment, and challengeth a Juror becauſe he was one of the Indictors, and held no challenge, but of felony it ſhould be a principall Challenge, P. 7 Ed. 4. *fol.* 4. *Chall.* 55. 12 *lib. Aſſ.* P. 36.

But in conſpiracy the plaintiff challenged a Juror becauſe he was one of his Indictors, and held a principall Challenge, *M.* 8 *H.* 4. *fol.* 2. *Chall.* 7. but where certain men were indicted of a conſpiracy, and found guilty at the ſuit of the King, and the party ſueth a Writ of Conſpiracy, and the ſame parcel remains againſt thoſe who were indicted, and held no cauſe of Challenge, yet the indictment upon which the action conceived was for felony, 27 *lib. Aſſ.* P. 13. *Chal.* 137.

In an Aſſiſe of *Oyer* and *Terminer*, it was held no Challenge, that in the ſame Writ another hath pleaded, and this Juror hath paſſed againſt him, and aſſeſſed damages of which this challenger ſhall be charged if he be attainted, 29 *lib. Aſſ.* P. 3. *Chall.* 145. it ſeems good, becauſe he may acquit him, although the other were found guilty.

In an Aſſiſe of Freſh force, it was found againſt the Plaintiff who brought a *Decies tantum*, and the Plaintiff challenged one who was ſworn in the former Aſſiſe, and it ſeemed a principall challenge; he was alſo called an imbracer in this Action, *H*: 13. *H*: 4. *Challenge* 171.

The Inqueſt paſſeth for the Plaintiff in an *Audita querela*, and afterwards a *Venire facias* iſſueth to the ſame panell to tax damages therein, there ſhall be no challenge to the Poles, unleſs it be for ſome thing of a later time, P. 22. Ed. 3 : *fol.* 5. *Challenge* 283.

IV. *Where the array may be challenged, becauſe made by the party to the Action in his favour, or where at his denomination, and what ſhall be ſayd denomination or favour.*

IN an Aſſiſe of rent out of Land in a Franchiſe, the Bailiff returns the panell, and by the return it appeared, that the Bailiff himſelf was Plaintiff and yet none challenged the Array, but as to the poles, and ſome being found ſuſpitious, all was quaſhed, and the Sheriff entred the Liberty, &c. and the Bailiff was not removeable, yet it had been better to have made the pannell of others, *&c. M*: 7: *Ed*: 3: *fol.* 56. *Challenge* 2: 7 *lib. Aſſ. P.* 11. *vide* 21 *Ed.* 4 *fol.* 29. agreeth, where the challenge was not to the array, which was made by the under-Sheriff coſin to the Plaintiff in favour of him, but the favour was enquired of, and one Juror being found to be put in for favour all was quaſhed, &c.

But a *Tales* made by the Sheriff being Plaintiff, it was quaſht without more adoe, 8 *H*: 6 : *fol*: 13.

So ſhall be the principall panell as it ſeems, 14 H. 6 *fol*: 2. *vide habeas corpus* to another, H: 8: H. 6. *fol*: 31: but he himſelf ſhall not make the panell, nor ſerve the *Venire facias*, for this is Challenge to the array, 9 H. 6. *fol*: 10.

He which challengeth the array (becauſe made favourably by the Plaintiff, Sheriff or Coroner,) it behooves him to ſhew his name that made it, and at what time, otherwiſe he ſhall not take advantage of it, *P*: 34 H. 6. *challenge* 69:

Array was challenged, becauſe made at the denomination of the Plaintiffs ſervant, which ſervant is alſo put in the panell, and tryers choſen, and it was held, that if one juror were put in by the denomination of the Plaintiff, all ſhall be quaſht, *H*. 7. *H* 4. *fol*. 10. *challenge* 85. 21 *Ed*. 4. *fol*. 29. *&c.*

One Panell was returned upon two actions by a man, and in the one Action it was found made at the denomination of the Plaintiff, and it quaſht both panells, T. 43. *Ed* 3. *challenge* 94.

But note, if the Plaintiff comes to the Sheriff, and prayeth him to make a panell of the moſt able of the County, and the Sheriff demands whom he

he will have, and the plaintiff names none, but ſaith, that the next day he will deliver him an eſchrole of 50. or 60. of the moſt able men, and ſo doth, and prayed him to return which of them he would, and the Sheriff or Bailiff returneth a panel of them, it ſeems well done &c. *P.41 Ed.3. chall.99.*

If the Sheriff ſuffers the parties by conſent to make a pannel, which they make &c, this is a good Array, although made at the denomination of the parties, and if two ſtrangers make a pannel without favour of any party, and deliver it to the Sheriff who returns it, this Array ſhall not be challenged *M.6.R.2. Challenge* 102.

If it be alledged in an aſſiſe, that the Sheriffs ſon hath married the daughter of *S.* who hath purchaſed the Land, depending the Aſſiſe, and the panel was made at the nomination of *S. &c.* and all was found, ſaving that the panel was duly made, and not at the nomination of *S.* wherefore all was good, *H.* 21. *E.*3. *fol.*5. *chall.* 112.

Upon challenge that the Sheriff made the panel at the nomination of the party, the Juſtices enquired onely whether the Sheriff had done his office without inquiry of the party, or of the nomination, *M.* 22. *Ed.*3. *fol* 12. *challenge* 118.

An Array was well made by the under Bailiff, and delivered to the head Bailiff of the liberty, who put in five Jurors at the nomination of the plaintiff, for which the whole was quaſhed, but if the panell had been returned by ſeverall Bailiffs, and one put in at nomination, the panell of the other ſhall not be quaſhed, 28 *lib. Aſſ. P.*22.

An Array was challenged, becauſe made at the denomination of the plaintiff, and not allowed becauſe he ſaid not, and in too much favour &c. ſo it ſeems that it ought to conclude to the favour, 28 *lib. Aſſ. P.* 23. It was otherwiſe ſaid at the firſt, 21 *Ed.*4. that although the inqueſt was indifferently made, yet it ſhall be quaſhed if at the denomination, but there aftewards the Juſtices changed their opinions, that it ſhall not be quaſhed without favour alledged, and an intention to help one party, and it was alledged to prove the ſame, that three of the Jurors at another time in an Aſſiſe with others, found for the Plaintiff againſt this Defendant, and that the Defendant ſhewed this to the underſheriff, and prayed him that he would not impannel them &c. and they were ſworn to ſay the truth of it, and the Array was affirmed, *H.*21. *Ed.*4 *fol.*74.

V. *Challenge to the Array becauſe made at the deviſe of a maintainer, or procurer, or of one who took money, or which purchaſed the Land.*

AN Array quaſhed, becauſe made at the deviſe of *S.* a maintainer, 12 *P.*15 *Ed.*3. *challenge* 113. and ſo at another time awarded, but

13 *Ed.*

13 *Ed.*3. it was alledged to be made at the request of *T.* a maintainer, in favour of the plaintiff, and the Tryers were charged to inquire if *T.* were a maintainer, and it was found that he was not, and that he intermedled not &c. *Trin.*13 *Ed.*3.*challenge* 108.

An Array challenged, becauſe made by the Bailiff of a Liberty, who was a maintainer of the quarrell &c. *Trin.*20 *Ed.*3.*challenge* 116. So by the Sheriff a maintainer, *P.*17 *Ed.*3.*fol.*50.*challenge* 13.*&c.*

An Array challenged, becauſe made by the Sheriff who had purchaſed parcell of the Land compriſed within the Writ, and it was a Writ of Champerty, and becauſe it was found that the Sheriff had purchaſed it of a ſtranger, and not of the party, the Array was quaſhed *M.*44 *Ed.*3 *fol.* 38.*challenge* 98

A Juror was challenged, becauſe he and one *T.* were bound one to the other, ſo that each of them ſhould embrace the others quarrell, and that *T.* had money of the plaintiff, and gave it to the Juror &c. and it was a good challenge, 34 *lib. Aſſ.P.*6.*challenge* 127.

It is no Challenge to the Array, that one Juror is Coſin, or favourable, but good to the Array, to ſay, that the Sheriff put one in to the intent to be favourable, for in the Challenge of the Array the office of the Sheriff is touched onely, not the differency of the polles, 8 *H.*5.*fol.*5. *challenge* 178. 7 Ed.3.*fol.*56.*challenge* 2. 21 Ed.4.*fol.*29. 49 Ed.3.*fol.*1. *challenge* 100.

A Juror was challenged, that he had taken of the party, and had publiſhed that the Plaintiff had right, and the Tryers found that he had taken nothing, and inquired not of that which he had publiſhed &c. becauſe he is ſworn to ſay the truth, otherwiſe if he had procured another to ſay ſo with him, *Quære M.*8 Ed.3.*fol.*69.*challenge* 4. So it is no Challenge that a Juror ſaid, that he would paſſe with the plaintiff, if it be not found that he ſaid this more for favour, then for the truth of the matter, *per curiam*, 20 *H.*6.*fol.*39.*challenge* 37. *fol.*41. but if he ſaid, he would paſſe for the one party true or falſe, this is favour, not ſo if he ſaid this, becauſe he had knowledge of the truth &c. *P.* 7 *H.* 6. *fol.*29. *challenge* 22.

A Juror was ſworn, although he had ſaid before, that he could excuſe the Defendant of the diſſeiſin &c. 12 *lib. Aſſ.P.*12.*chall.*9.

VII. *Where Challenge to the Array, or Jury in one principall, or for one, ſhall be a Challenge for all the principalls, and againſt all, and how where the one party hath loſt his Challenge, and where a Challenge to an Array or parcel challengeth all.*

A Writ by many *Præcipes*, one Tenant in one *Præcipes*, challengeth the panel for affinity and cauſe touching the Demandant, and up

upon this found, adjudged that the panel ſhall be void againſt them all, *P.*10.Ed.3.*fol.*19.*Chall.*5.

An Abbot brought two actions of Debt againſt two, and ſeverall iſſues tryed, and two panels returned, but the ſame Jurors for both, and the Array challenged in the one for nomination of the plaintiff, and upon this being found it was held that both panels ſhould be be quaſhed, *T.*43 *Ed.*3.*Challenge* 94.

An Appeal againſt many who pleaded not guilty, if one *venire fac.* iſſued returnable for all, a peremptory Challenge for one Defendant is a challenge for all, but the plaintiff ought to ſue ſeverall *Venire fac.* and to be ayded &c. and in an Aſſiſe againſt three awarded by default againſt two, they have loſt their Challenge, but if the third challenge one who is drawn, he ſhall be drawn againſt them all, and it was ſaid, if at a Gaole-delivery the Jury be charged upon two or three, and one challengeth peremptory, the Clerk will ſever the felons, becauſe the panel is not made between any perſons certain, 9 *Ed* 4 *fol.*27.*Challenge* 56. and it was ſaid, in the book, that if a Juror be favourable to the one plaintiff, he is favourable to them all for their joint title, but he may favour the one Defendant and not the other, and ſo it ſhall ſtand againſt him, *Quod Quære* 9 *Ed.*4.*fol.*27.4.*Ed.*4.*fol.*1. *Plo.Com.*100. *acc.*

See in an appeal againſt the principall and acceſſory, who pleaded not guilty, and the acceſſory challenged the Array, and the principall ſaid nothing, yet it was quaſhed againſt both, 10 *H.*4 *fol.*5.*Chall.*150. 4 *H.* 4.*fol.*5.*Chal.*157. 14 *h.*7.31.18 *E.*43. 15 *b.*7. 9. 31 *b.*6.10. *acc.*

Aſſiſe againſt two, the one took upon him to be Tenant of parcel, and challenged a Juror, and it was taken for both, although the other would have had him ſworn, 30 *lib.Aſſ.P.*41.*chall.*148. So of two demandants, and the one would have him ſworn, and the other not, for the contrariety, 10 *H.*6.*fol.*15. *chal.*31.

But ſee wherein a *Decies tantum* by three, one challenged a Juror, and the other would not, and he was ſworn becauſe the others would have him ſworn, *H.*13.*H.*4 *chal.*171.*&c.*

Note if the Inqueſt be awarded by the Defendant, if the plaintiff challenge any, he ſhall not be drawn without inquiry, and this the Juſtices may do *ex officio*, to the intent that right may be done, although that here the Defendant hath loſt his Challenges, 2 *H.*4. *fol* 14. *challenge* 76. *vide ſupra A* 9. *Ed.* 4. where the one made default and the other challenged.

Array was duly made by the under Bailiff, and the head Bailiff put in five Jurors favourably, and retorned it, and becauſe the Array was returned by him, the whole was quaſhed, but where the Array is to be made by two Bailiffs, and the one makes his part favourably, the whole ſhall not be quaſhed, 28 *lib.Aſſ.P.*22.*challenge* 140.

VIII. *Where Challenge to the Array or a Juror ſhall not be loſt by Laches or Default, and how it ſhall be made, where the Plaintiff challengeth, and the Defendant ſaith nothing, and after the Plaintiff releaſeth.*

THe Demandant challenged a Juror, and when the Inqueſt was looked over, and when they came back to the ſame man, the Demandant releaſed his Challenge; and then the Defendant challenged him, and it was held to be well done, for when he is to ſhew cauſe of his challenge, when the inqueſt is looked over, he comes time enough to challenge, &c. *M.* 37. *H.* 6. *fol.* 8. *Challenge* 48. *Tr.* 9 *Edw.* 4. *fol* 16. *Challenge* 55. *per curiam.*

M. 11. *Jac.* in C. B. *In Symmons caſe, it was adjudged, when a juror is challenged by one party, who hath good cauſe of challenge, and afterwards he is challenged by the other party, who afterwards doth releaſe his challenge, now he cannot be challenged to the firſt party becauſe he did enfeoff his time of challenge, and had admitted the party to be indifferent at the firſt.* vi. 37. H. 8,

But ſee, Where the Plaintiff challengeth one, and the Defendant challengeth another, and now the Plaintiff releaſeth his Challenge, and then the Defendant would have challenged, and could not, becauſe he made it not when the Plaintiff challenged him, *M* 8. *H.* 5. *fol:* 10. *Challenge* 151. and to this agreeth *Fitzh.* 27 *H.* 8 *fol.* 2. That the Defendant who ſayd nothing at the firſt, ſhall not challenge him at the peruſall of the pannell who was challenged before by the Plaintiff. *Englefeild contra*, and *Vavaſor* ſaid, That where the Plaintiff challengeth one, and the Defendant challengeth all below, if the Plaintiff demands not their names, and takes his challenge preſently after, he ſhall not do it when the other will releaſe, 14 *H.* 7. *fol.* 5. *vide* 9 *Ed.* 4. *Challenge* 55. 7 *E.* 3. *Contr.*

A juror once tryed and found indifferent, ſhall not be challenged afterwards, becauſe he had nothing within the Hundred, 9 *Ed.* 4. *fol.* 16. *challenge* 55.

A man ſworn ſhall not be challenged afterwards, if not for ſome later cauſe, 22 *Ed.* 4 *fol.* 1. *Challenge* 64. and therefore if certificate be taken by the ſame inqueſt, there is no challenge to them, becauſe the ſame inqueſt, and 12 *H.* 4 *fol.* 10 *challenge* 90.

It was ſaid, that the party may not releaſe his challenge after the tryers are ſworn, for if they give not their verdict it is errour, 21 *Ed* 4 *fol.* 70. But it was otherwiſe done when the parties were ſworn, and ready to give their verdict in affirmance of the array, the party refuſed his challenge, 27 *H.* 8. *fol.* 26.

The Plaintiff ſhall not challenge the array becauſe the Sheriff is his coſin, for this he did know before, and might at firſt have prayed proceſs to the Coroners, otherwiſe it is, if he be coſin to the Defendant, &c *T.* 15. *H.* 7 *fol.* 9.

XI. *Where*

IX. *What ſhall be done where both parties challenge, and where the plaintiff and the Defendant challenge one by Coven, or without Coven what ſhall be done.*

IF one be challenged by the plaintiff, becauſe he hath nothing within the Hundred, and by the Defendant for the ſame cauſe, he ſhall be drawn without more ado *per curiam*, 3 *H.6.fol.*38. See that in the book at large, he was alledged by the one for favour, and by the other becauſe he had nothing within the Hundred, *ibidem fol.* 38. *vide* 36 *H.6 fol.*27. *chal.* 47. agreeth by the way, but there *Priſot* ſaid, that he ſhall not be drawn without making Fine for certain contempt &c.

Vide 3.h.6.16 9 E.4.16.37 H.6.8. C. Litt. 15. *and diverſe challenges are not accounted double.*

In an attaint the Defendant challenged the *Decem tales* becauſe made in favour, and the plaintiff challenged it without cauſe and quaſhed, *P.* 8 *H.4.fol.*22. *challenge* 8.

13 Eliz. Dyer 298. *If a Juror be challenged by both parties he cannot afterwards be ſworn, though the parties will releaſe their challenge.*

But ſee, it is ſaid, that he who challenged by both parties, is ſuſpected of none, and therefore may be ſworn, 20 *lib. Aſſ. P.*13.

Præcipe by two againſt one, the Tenant and one demandant challenge, another demandant prayes that he may be ſworn, and that the Coven may be inquired of, and it was holden it ſhal be for the miſchief, but if it were in an appeal, he ſhall be drawn without inquiry of the coven, *in favorem vitæ*, 10 *H.6.f.*16. *challenge* 31.

Vide 27 *h* 8.2. 30 *Aſſ.*13.14 *b.* 7.5.37 *b.*6.8. *C* 17 *acc.*

In a Formedon the Tenant and voucher were at iſſue upon the place, and they both challenged the Array, the demandant ſaid that it was by coven, and it was to be inquired of *per Shard*, *H.*35 *Ed.*3. *chal.* 156. *M* 38 *H.6.f.6. challenge* 49.

Upon a challenge that he had an action of Treſpaſſe depending againſt. him, the other may ſay, that it is by coven, if the action of Treſpaſſe was begun depending this ſuit, or returnable but three or four dayes before this Writ, and it ſhall be tryed, *M.*38 *H.6.f.6. challenge* 49 So where the Writ of maintenance bore date before this ſuit againſt the Iuror by the plaintiff the Defendant may aver the coven, to the intent there ſhould none be ſworn, *M.*43 *Ed.*3. *chall.* 93. *Cokain contra*, in Treſpaſſe if brought &c.8 *Hen.*5. *f.*11. *chall.*179.

A panel made by Coroners was not quaſhed by Challenge that it was the ſame panel which the under ſheriffe had retorned the other Term, *H.* 25 *Ed.*3. *f.*73. *challenge* 121.

X. *Where the Array ſhall be quaſhed by the miſdemeanor of the Sheriff or Officer in a falſe return, or not a ſufficient return, or by returning more or leſſe panels then he ought.*

VEnire facias in Debt, it was returned *Mandavi Ballivo Libertatis de* C. who hath made the panel, and the *Habeas corpora* returned accordingly, and at the *Diſtringas* he returnes, *Mandavi Ballivo Libertatis de* C. *& Libertatis Regine*, and it was challenged; *Belknap*, It may be that ſome of them who were impanelled in the County ſold their Land there, and now have Land in the other Liberty, and if it be ſo the Array is good, but this cauſe ought to be certified by the Sheriff, and although not certified, yet the Array was awarded good, *Tr.* 18. *Ri.* 2. *challenge* 176. *Vide* 45 *lib. Aſſ. P.* 1.

In conſpiracy at the *Venire facias*, the Sheriff returned, *Mandavi ballivo Libertatis*, who anſwered and returned but four perſons, becauſe there was no more ſufficient, and the Sheriff himſelf ſupplied the panell without other authority, alſo he himſelf returned the *Octo tales*, and it was held good, becauſe the return of the Bayliff is ſufficient, and ſhall be intended to be true, and no cauſe to have a *Non omittas*, ſo the Sheriff did well, a ſupply of the panell, and the array good, *M.* 22 *Rich: chall.* 177. But *vide* 8 H. 4: *f.* 17. Where the Sheriff returned that the Bayliff had ſerved the panell, but not the *Octo tales*, becauſe there were no more ſufficient, and it was holden that the Sherif now ought to make the whole panel and the *Octo tales*, and becauſe the Bailif made parcell, the whole was quaſht, and a *Non omittas* awarded, *Inqueſt* 32.

Return made by a Sheriff which is now removed is void, if the panel were not made before, *&c.* 43 *lib. Aſſ: p:* 22.

Note, That if a Baylif make a panel or part of it, and the Sherif return it, as made by himſelf, the array ſhall be quaſht, for otherwiſe the party ſhould loſe his challenge *&c.* 17 *Ed.* 3. *fol.* 50. *chal:* 13: 17 *Aſſ. p.* 11. 8 *Ed.* 3. *f:* 22. 8 *Aſſ: p* 9.

Iſſue upon counterplea of receit, the Sherif returnes the panell with the *Venire facias* at the ſuit of the Plaintif, and alſo four other Writs with panels, by the procurement of the Prayee, and the array was quaſht for ſuſpition, becauſe the Court did not know that the panell was duely made, and a new *venire facias* awarded, and the Sherif amerced for returning two panells to one originall, *T.* 5. *Edw.* 3. *chal.* 6.

Array was alſo quaſht, and proceſs to the Coroners who returned a panell, and was challenged, becauſe no Hundredors in it, and it was ſurmiſed that there was none who was not of the fee of the Plaintif, and thoſe of the Hundred adjoyning, and it was ſaid that yet it ſhall be quaſht, for that cauſe,

cauſe, not contained in the return, but the array is good, becauſe it is found good cauſe by the tryers, 45 *lib. Aſſ. p.* 1. *Challenge* 123 *R.* 2.

A Bailiff returned others then thoſe which he made to have the view, but the under-Bailiff confeſſed it, and he was compelled to put in thoſe which were of the view, but this was done by a *Non omittas* to the Sherif, and the Bailif not amerced becauſe abſent, 41 *lib. Aſſ. P.* 26. *challenge* 166.

XI. *Challenge to the Array, becauſe it was not by the Bayliff of the Liberty, or Guild, or the Sheriff where he ought, &c. or becauſe the Sheriff had made it, where the Bayliff of a Liberty ought, or the Bayliff returns thoſe of the Guild.*

AN Aſſiſe of Nuſans levied in *D.* to his Freehold in C. where D. and C are ſeverall Liberties, and the Sheriff himſelf ſerves the Writ all of the one, where both have full return &c. and it was held nought, and the Array quaſht, becauſe not made by both Bailiffs, and the Jurors ought to have view of both lands, and this by the commandement of both bailifs. Alſo *Herle* ſayd, Where the Sheriff enters a Liberty, and makes a panel, he ought not to return it as made by him but by the Bailif, but the liberty being ſeiſed into the Kings hands, it ſeems that the Sherif may well make the return, for now he doth all as baylif, 8 *Ed* 3. *fol* 22. *chal*. 3. 30 *lib. Aſſ P.* 42.

The Sherif returns a panell in *E.* where the Land is in *D.* and C. two wapentakes guildable, and the array quaſhed, becauſe none of *D.* was returned, 28 *lib. Aſſ. p.* 38. *challenge* 141

An Aſſiſe in three towns, the Sheriff commands the bayliff of a Liberty that he ſerve all the panell, where the one town is out of the Liberty, and judgement was affirmed in error, 3 *H.* 4. *fol* 6.

The Sheriff returned *Mandavi ballivo*, of T. who hath returned this panell where S. had alſo a full liberey within the liberty of T: to which the bayliff of T. ought to ſend it, becauſe the Land is in the liberty of S. and becauſe it was not ſo done, nor ſo returned, the array was quaſht, the bailiff was alſo alledged to be favourable, and both found, *P.* 32, *Ed.* 3 *challenge* 111.

In a *Mortdanceſter*, the array was quaſht, becauſe the bailff returned ſome who were of the Guild, &c. and if parcell of the Land be in a Liberty, and parcell in the Guild, they of the Guild ſhall be returned by the Sheriff, but thoſe which were impannelled were not taken away, 32. *lib. Aſſiſe P.* 6. *challenge* 125. *Quere*, why they ſhall not

not be put out, *Trin.* 32. *Ed.* 3. *challenge* 110; but ſee that where the Sheriff returns men of the liberty it is good, 30 *lib Aſſ. P.* 5. *&c.*

Upon an indictment of Rape, becauſe the King is party, it was holden the Sheriff might enter the Liberty to ſerve a Writ, and not to ſend it to the Bailiff, and for an ill return of the Bailiff the Sheriff was amerced, becauſe he made not the panel himſelf, becauſe there is no liberty againſt the King, 38 *lib. Aſſ. P.* 19. *chall.* 129.

A Bailiff of a fee ſhewed that he had made a panel, and the Sheriff had made another of himſelf, to the deſtruction of his Bailiffwick: this is not in the Caſe of the Statute, becauſe not Bailiff of the Guild. *Shard*, though he were Bailif of the liberty, the panel ſhal not be quaſhed, but you may bring your action againſt the Sheriff if you will, 30 *lib. Aſſ. P.* 5. *chall.* 147. *Vide* agreeing, *M.* 11 *H.* 4. *fol.* 9. that the execution of a Writ done by the Sheriff within a Liberty is good, and the Lord is put to his action againſt him, but that which the Bailiff did out of his Liberty is void, and of this ſee 5 *Ed.* 3. *f.* 26. and 8 *Ed.* 3. *f.* 3. *vide Diviſ.* 10. *P.* 22 *R.* 2. the Bailiff made parcell.

In an aſſiſe of Common in *D.* appurtenant to his Freehold in *S.* the Array was challenged, becauſe *D.* is within the Liberty of *E.* and the Sheriff hath retorned the whole panel of Forrainers, and becauſe it was ſurmiſed that both the Towns were in one Wapentake, and the Sheriff made his Warrant to the Bailiff, who returned 6. which the Sheriff ſeeing to be ſuſpitious put them out, and made the whole himſelf, whereby the Array was good, and the Aſsiſe taken, although it was ſaid that he ought to have put in thoſe which were returned by the Bailiff, and ſhould be ouſted afterwards by challenge, but the reaſon was becauſe perhaps all within the Liberty vvere ſuſpitious, *H.* 11. *Ed.* 3. *Verdict* 25.

The ſon of the plaintiff vvas Stevvard of a Liberty, and the panel made by the Baliff there not being removable, and the Array vvas held good, 12 *Aſſ. P.* 12. *challenge* 9.

XII. *Challenge to the Array or polles, becauſe he who made it is Attorney, or of Counſail, or fee with the party, or being made by the Bailiff or under Sheriff, ſhall be a Challenge, becauſe the Sheriff is of the Councell &c.*

IN Aſſiſe the Array was challenged, becauſe made by the Bailiff of *R.* who is in Livery and fee of the Defendant, and not allowed without ſhewing that he is of his counſell, as well of a thing touching his office, as in other things, but the judgement was reverſed afterwards, becauſe the Challenge was not allowed, 8 *lib. Aſſ. P.* 13. *Challenge* 7.

Of a Challenge that the Iuror is Bailiff and hath fee, or is ſervant to the

the party &c. *vide Diviſ.* 16. 21 *E.* 4. & 14 *H.* 7. but it is no challenge, that the Iuror is keeper of a forreſt, and the plaintiff Maſter of the Game, *P.* 16 *Ed* 4 *fol* 1 *Diviſ* 2.

M 29 *Eliz in Co.* 1 *B. In an attaint by Hodie a gainſt Winchcomb, one of the grand Jury was challenged becauſe he was a Captain and one of the petty Jury was his Lieutenant and holden no cauſe of challenge, and ſo it was alledged where one of the Jurors was Maſter of the Game and one of the petty Jury was keeper of his Park.*

Array quaſhed, if the Sheriff hath robes &c. although it was duly made by the Bailiff, the Sheriff not knowing &c. for it ſhall be intended favourable, 44 *lib. Aſſ p.* 18 *Chall.* 89. 44 *Ed.* 3. *f.* 44. agreeth, where the Sheriff was Coſin, and the Bailiff made the return, 31 *lib. Aſſ. P.* 7. *chal.* 149 So where the under Bailiff makes it duly, and after the head Bailiff puts in five by procurement, the whole was quaſhed, although he returned the others as they were duly put in by the under Bailiff, becauſe it is favourable, 28 *lib. Aſſ p.* 22. *chal.* 140. and upon Challenge, becauſe the Sheriff hath robes, where it was ſhewed that the Bailiff of the Liberty made the panel duly, yet it was onely inquired, whether the Sheriff had robes &c. *M.* 22 *Ed.* 3. *f.* 12. *challenge* 117.

Vide Diviſ. 2. *A.* 12. Aſſiſe challenged becauſe the ſon of the plaintiff, Steward or Bailiff made it, yet good, and it ſeems ſo, becauſe the Steward did not retorn the panel, but the Bailiff &c.

The Array ſhall not be challenged, becauſe the under Sherif hath robes of the plaintif, if the Sherif make another Deputy who retorns it, 26 *lib. Aſſ. p.* 56. *chal.* 136. So if a Bailiff of the fee made it, and not the under Sherif, nor the Sherif, *M.* 12 *Ed.* 3. *chal.* 114. 12. *Aſſ. p.* 36. but it ſhall be a good challenge that the under Sheriff being partiall or not, the one made it, although that the Sherif be indifferent, *M.* 24. *Ed.* 3. *fol.* 37. *chal.* 120. *Diviſ.* 13. *B.*

Dean and Chapter made a Leaſe to a Chanon of a Pool, and in Nuſance againſt him, the Bailiff of the Dean and Chapter made the panel, and it was ſaid, that he ſhall not be challenged, although the Dean and Chapter themſelves were parties without aſsigning default in the Bailiff, P. *Ed.* 3. *fol.* 23.

The plaintiff being Sheriff of the fee, and *R.* his under Sheriff, and had his robes and of his fee, for which the Aſsiſe was quaſhed, although the under Sherif was ſworn, and amerced as Sherif, and it was affirmed in error, 9 *lib. Aſſ.* P. 8. *challenge* 8.

Array challenged becauſe favourably made by *S.* under Sheriff it vvas alledged that he vvas not under Sherif at the time &c. yet it vvas inquired vvhether favourably made, P. 22 *Ed.* 4. *challenge* 61.

It vvas held no principal Challenge in an attaint, that the under Sherif vvho made the Array vvas attorney for the plaintif, in the firſt action, becauſe his authority ended in the judgement, ſo to ſay that he is of his Councel novv, for it cannot be intended that he vvill be corrupt vvithout alledging of it, 7 *H.* 7. *fol.* 10. *challenge* 66.

A Iuror vvell challenged, becauſe being of Councel vvith the plaintif, 3 H. 6. *fol.* 24. *chal.* 16. and a Iuror challenged, becauſe the plaintif is of his Councel, and hath an annuall fee, good, 2 H. 4. *fol.* 13. *challenge* 75.

XIII. *Challenge to the Array, or to the polles, becauſe the plaintiff hath Action &c. or becauſe he hath action againſt the party.*

IT is no challenge to the Array, that the Sheriff who made it hath an action of Debt depending againſt the party, if he alledge not other malice, but it ſeems good if that the Defendant hath an action of Debt againſt the Sheriff or Coroner who made it, and it was tryed by Tryers without ſhewing the Record, and ſo is the uſe, *Hank è contra M.* 11 *H.*4. *Chall.* 86. but it is a good Challenge that the Sheriff hath an action of Battery againſt the Defendant, 11 H.4. and it ſeems good cauſe of Challenge, that the party hath an action of Treſpaſſe againſt the Juror, if it be not by coven, 38 H.6. *fol.*6. *chal.*49. So if he have an action of Maintenance depending againſt the Juror: So if the Iuror hath Treſpaſſe or appeal againſt the party, 21 *Ed.* 4. *f.*14. *per Starkey*, and it ſeems he ought to ſhew the Record, or if it be in the ſame Court to ſhew the time and Term, 43 *Ed.* 3. *chal.*93. but *Stamford* ſaith, that this uſeth to be tryed by Tryers, 11 H.4. *fol.*26. *challenge* 87.

In an attaint, the Defendant challenged one of the Jury, becauſe he and one of the petty Jury were at debate, and the Challenge tryed, and found it was no cauſe, H.32. *Ed.*3. *chal.*109.

The under Sheriff of *Middleſex* made an Array by the command of the Sheriff of *London*, and the Sheriff returned, it ſhall be a good challenge, that the under Sheriff and Tenant are at debate, becauſe the under Sheriff killed his ſervant, *M.*24 *Ed.*3. *f.*37. *Chal.*120.

A Iuror challenged in an Aſſiſe, becauſe he indicted him of Felony, 12 *lib. Aſſ. p* 36. *chall.*11. ſo becauſe he had indicted him of the ſame Treſpaſſe whereof the action is brought, *M.*10. H.7. *fol.*11.

The Defendant challenged a Iuror, for that he himſelf ſued him at the Court of *Rome* upon a debate betwixt &c. *Thorp*, this lieth not in his mouth becauſe his own ſuit, but the Court may inquire if the Iuror hath done him any Treſpaſſe, *M.*38 *Ed.* 3. *fol.* 25. *chal.*92.

XIV. *What Challenge ſhall be to the Array, and not to the Jurors, and what to the Jurors and to the Array.*

CHallenge, that a man is put in to the panel at the denomination of the party, is to the Array onely, and therefore if he have accepted the Array for good, he ſhall not challenge any Iuror for this cauſe, H.49 *Ed.* 3. *fol.*1. *chal.*100. 21 *Ed.*4. *f.*29.

It ſhall be no challenge to the Array, but to the polles, that Tenant or

or Cosin of the plaintiff is put in the panell, *H.9 H.6.fol.65. M.14.H.7 fol.1.*

Vide all the *Divis* before for this matter.

XV. *Where Challenge may be for affinity to the party or to his kinsman, or alley of the party, and how it may be pleaded, and for Gossiphood.*

A Juror was challenged, because he is Gossip to the party, and the party to him, and it was found that it was no cause, 10 *H.6 fol.24. Challenge* 40. But the Justices would not enquire whether the Juror were Godfather to the Plaintiff, and so it seems no challenge, *Tr.7.H.6.fol.40 Challenge* 23. and so agreeth 40 *lib. Ass. p.20. challenge* 131. But it was holden otherwise, *M.2.H.4.fol.15. Challenge* 77. because to be a Godfather is affinity, but although Gossip, Cosin or Tenant, it shall not be materiall, nor traversable, although that he shew it, *P.7.Ed.4.fol.5.* It is a good challenge that the Juror hath taken the child of the Plaintiff, *Ad sacram fontem*, and a principall challenge for the affinity, *p.19 H.6. fol.66. challenge* 34. 4 *Ed.4.fol.11. challenge* 51

And upon a challenge, that the Sheriff who made the panell was at the baptisme of the son of the Plaintiff, he needs not to aver the life of the sonn, but it was where the challenge was, because the plaintiff hath married the cosin of the Sheriff, 10 *H.7.fol.7. contra, M.20 H.6.fol.42.* and that it is all one, but of the alliance, it seems that he ought to aver the life of the cosin or daughter, *M.10 H.4 fol.* 4. but the challenge is good if shee had issue though shee be now dead, *p.22 Ed.4.fol.2.* and it shall be alledged, 29 *lib. Ass. pla* 3. but this was surmised of the other party, 14 *H.7.fol.2.* but it was sayd it was no challenge that the Sheriff hath married the cosin of the party. 12 *lib.ass.p.36. challenge* 114. 26 *lib. Ass.p.21. contra,* 22 *Ed.4.fol.2.* where his issue to the party might inherit.

Note that it is no principall challenge, that the son of the Juror hath married the Daughter of the Party, *&c.* but that the Juror hath married the daughter of the party, or *e contra* is principall challenge without more a do, 3 *Ed.4.fol.12. challenge* 50. 21 *Ed.4.fol.75.*

One of the grand Jury in an attaint, and one of the petty Jury, had married two sisters, and he said further, that he was procured, yet he shall be sworn, if the procurement be not found, 43 *Ed.* 3. *challenge* 93. and that the Juror had married the sister of the wife of one of the petty Jury, is no principall challenge, 43. *lib. Ass. p* 25. *challenge* 103.

In an attaint, some were challenged, because their wives who had cosins in the house of the Prior, the Plaintiff, 34 *lib. Ass. p.* 6. *challenge* 127.

The array was quasht in an attaint, because the Brother of the Defendants

dants wife had married the Daughter of the Sheriff, but it was held no principall challenge, *per Butler*, and *Conſtable*, 25 *H.7. fol.9. challenge* 173. but he ought to alledge the life of the brother and the daughter of the ſheriff.

It is a good challenge to the Array, that the ſheriff hath married my great Aunts Daughter, if they had iſſue alive, 22 *Ed.* 4. *fol.*2 *ut ſupra B.*

XVI. *Challenge to a Juror, who is within the Diſtreſſe of the party, or becauſe the party is within the Diſtreſſe of the Juror, or where, becauſe within the Diſtreſſe of the Sheriff, and where otherwiſe.*

THe array was challenged, becauſe the plaintiff hath married the niece of C. and he who made it is Tenant to C. and the array made by the Councell of C. and not allowed without alledging a ſpeciall procurement, becauſe C. is a ſtranger, 12 *lib. Aſſ. p.*3. *challenge* 10. 15 *Ed.*4. *fol.*18. agreeth, but in Treſpaſs, the Defendant ſayd, that the Freehold belongs to C. and that by his commandement &c. this ſeems by many a principall challenge to ſay, that the Juror is within the diſtreſſe of C. and if he hath ayd, it was clear, as upon iſſue by Tenant by receit, it is a good challenge that the Juror is within the diſtreſſe of the tenant for life, 10 *Ed.* 4 *fol* 12. *challenge* 58. But it ſeems to be no challenge untill the Maſter joyne, for upon ſuggeſtion that the ſheriff is within the diſtreſſe of the Maſter, he ſhall not have proceſſe to the Coroners before that he joyne, *Quare* as if he challenge. that the Juror is within the diſtreſſe of the Feoffor of the plaintiff, 9 *H.7. fol.*23. *contra per curiam*, 15 *Ed.*4 *fol.*18.

In account, a Juror was challenged becauſe Tenant to the Defendant, and it was found upon examination that he was enfeoffed to anothers uſe of Lands holden of the Defendant, and that he had done fealty, whereupon he was drawn, which he ſhould not have been, if he had not done fealty, *Per Martin. P.*3 *H.*6. *Challenge* 19.

In a *Quare impedit* againſt two, the one made default, the other at iſſue with the Plaintiff, challenged a Juror, becauſe Tenant to his companion, and held no principall challenge without concluding to favour, becauſe the Action is alſo againſt his Companion, *P.*3. *H.* 6. *Challenge* 17.

A Juror was challenged becauſe within the diſtreſſe of the Plaintiff, and ſome found free Tenants, and ſome within the Diſtreſſe, as Tenants at Will, and was drawn, 36 *H.*6. *challenge* 46.

But in account upon ſuch a Challenge, found that the Defendant leaſed Land to the Juror for the term of anothers life, and that he

for

for whoſe life &c. was dead &c. but the Corn of the Iuror was yet growing, and becauſe there were many Iurors, he was commanded to go from the Bar for a time, 4 H.6. *fol.*25. *Chal.*20. *vide Execution Diviſ.* 2. but where the Plaintiff hath a Leaſe of the Ward of Land during nonage &c. rendring Rent to the Iuror, who hath granted over his eſtate, he was drawn the term continuing, becauſe the plaintiff may have an action of Debt againſt him, *per Knivet*, 44 *Ed.* 3.*fol.*5.*Chal.*97.

It is a good Challenge, that the Iuror is within the Diſtreſſe of the plaintiff or Defendant, or within his Leet or Hundred, and if he hath Freehold in his own Right, or in right of his wife, or by *Ceſtuy que uſe*, Or if he hold by Feoffment to the uſe of the Plaintiff, its holden a principall Challenge *per curiam*, and if one be enfeoffed to the uſe of a Iuror of Land holden of the plaintiff, it is a principal Challenge by *Babington*, H.9 H.6.*fol.* *chal.* 27. agreeth of the Leet, and Hundred, becauſe within his diſtreſſe, *M.*38. *Ed.* 3.*fol.*25.*chal.*92.

2 *Eliz. Dyer* 175.3 *b.*6. 39.10 *E.*4.12. 15 *E* 4.*C.* 8. *Lit.* 157.*acc.*

And upon a Challenge, becauſe within the diſtreſſe &c. the Iuror confeſſed that he holds of one *F.* as of his Mannor, who holds the Mannor over of the Plaintiff, and becauſe the plaintiff might there diſtrain, this was held a principall Challenge, *P.*22.*Ed.*4.*chall.*61.*M.*38.*Ed.*3.*fol.*25. *challenge* 92.

It is a good challenge in an attaint, that the Juror is ſervant, or within the diſtreſſe of one of the petit Jury, either to the Plaintiff or Defendant, becauſe under his correction, but *Quere* of the Challenge, that one of the petit Jury is Bailiff of the Mannor of one of the Grand Jurors, but it is a principall Challenge in an attaint, that one of the petit twelve is tenant, and within the Diſtreſſe of one of the Grand Jury, becauſe the Land ſhall be deſtroyed, but it is no challenge that the plaintiff is within the Diſtreſſe of the Grand Juror, *ut dicitur M.* 22. *Ed.*4 *fol.*1. *Chal.* 64. and it was holden a principall challenge if the Grand Juror hold of one of the petit Jurors, and that the plaintiff is Bailiff, and hath fee, or ſervant to the Juror is no challenge, bnt it ſhall be a good Challenge; *è contra per Read, Fineux* and *Keble*, *M.* 14H.7.*fol.* 2.So no Challenge, that the Defendant is within the Diſtreſſe of the Juror, *ibidem*, but *vide conceſſ.* that is no principall challenge, that one of the petit Jury was within the Diſtreſſe of one of the Grand Jury, *M.*21 *H.*7. *fol.*37.48. which it is, if one of the Grand Iurors holdeth of one of the petit twelve, *ibidem.*

Tenant by receipt voucheth, and are at iſſue upon the Counterplea, and a Iuror challenged, becauſe within Diſtreſſe of the Vouchee, *& non allocatur*, but if he had been within the Diſtreſſe of terr-tenant, this is a queſtion, *M.*7 *H.*4.*fol.*1. *Challenge* 84.

But where Tenant by receipt joyns the iſſue, it ſhall be a good Challenge, that the Iuror is within the Diſtreſſe of the Tenant for life, 10 *Ed.* 4.*fol.*12.

It is no Challenge, that the plaintiff is within the Diſtreſſe of the Sheriff,

riff, without ſhewing favour, but it ſhall be good; *e contra*, 27 *lib. Aſſ. P.* 28. *Chal.* 138. It is a good challenge to the Array, that the Sheriff is Tenant to the Defendant, but not if he hath ſold the Land before &c. *T.* 15. *H.*7. *fol.*9. *T.*20. *H.*6. *fol.*42.

XVII. *Challenge for the Hundred, and where and when he may challenge, and where Hundreds or Rapes or Wapentakes.*

*Note concerning Challenges for Hundred theſe Rules, C. Lit.*158. 1. *For action reall or perſonall, if two hundredors appear, it is ſufficient.*

ONe challenged by both parties, becauſe he had nothing within the Hundred, he was drawen, 3 *H.*6. *fol.*38. *Challenge* 18. and upon ſuch Challenge, tryers ſhall not try if he dwell within the Hundred, nor of what value his Land there is, but onely whether he hath any thing within the Hundred, 9 *H.* 6. *fol.* 66. *Chall.* 26. But it was ſaid, if he dwells within the Hundred, that he ſhall be ſworn, whether he hath not any thing within the Hundred, and if he hath, he ſhall alſo be ſworn, although he dwelleth not there, 21 *Ed.*4. *fol.*89.

2. *They ought to panel freeholders in the hundred or dwelt here.* 3. *If there be ſeverall hundreds within a Leet, if they come out of any of the hundreds, it is ſufficient.* 4. *If one of the parties be Lord of the hundred, if the Jury be* de corpore Comitatus *it is ſufficient, if a hundred ſell his Land, it is no cauſe of Challenge, for his Notice is the point materiall.* 5. *He who is challenged forhundred muſt ſhew in what hundred.*

See the Statute, *Anno* 35 *H.*8. *cap.*6. willeth that ſix Hundredors be returned in every panel.

He ſeems to be a good Hundredor, who hath any thing within a Rape, which hath divers Hundreds, and all there ſworn together twice a year, although he hath nothing in the ſame Hundred &c. not ſo, if he do not ſuit at the Rape, but at another Leet, 10 *Hen.*6. *fol.* 5. *Challenge* 8. But although that the Rape be a Liberty, and they all within it, yet if they be ſworn at two ſeverall Leets, and not at one &c. the Challenge ſhall be good. *M.*11. H.4. *fol.*3. *Challenge* 86.

After that four are ſworn which are within the Hundred, it is no challenge that another hath not *&c. per Curiam*, 19 H.6. *fol.*9 *Challenge* 32. and upon this Challenge the tryers ſaid, that there were five of the Hundred, and thereupon he was ſworn, *M.* 2. H. 4. *fol.*6. *Challenge* 74. and four Hundreders were enow, as well in an attaint, as in an other action, 7 H.4. *fol.*47. *Challenge* 82. and it ſufficeth to have two of one County, and two of another where the iſſue is in two Counties, *per Curiam*, 11. *H.*4. *fol.*63. *Chall.*88.

In an Annuity, ſeiſin alledged in one Hundred, and the Church in another &c. and the third Iuror challenged, becauſe he had nothing in the Hundred where the Church was, *non allocatur*, if he had where the ſeiſin

&c.

&c. *P.* 20. *H.* 6. *fol.* 23. *Challenge* 35. and it ſufficeth to have two Hundredors where the Church, and two where the ſeiſin was alledged, and 20 H. 6. *fol.* 25.

It is a good anſwer againſt this Challenge, that he was ſworn before, the other ſaith, that he had ſold his Land, yet it ſeemed afterwards that he ſhall be ſworn, for this Challenge is onely for want of notice, and it ſtayed becauſe after the ſale *per curiam*, but it ſeems that he might ſay, that the Land is deveſted by courſe of Law, *Quare* the reaſon, it ſeems all one, 21 H. 6. *fol.* 69. *challenge* 68. and in attaint, he which had Land at the time of the panel made and ſold it after, was ſworn, *M.* 14 H. 7. *fol.* 2. Otherwiſe it is of him who is challenged, becauſe he hath not ſufficient freehold generally, 12 H. 7. *fol.* 4. *Diviſ.* 8.

An inqueſt comes ready to paſſe againſt *J.* who hath aid of the King, and they all were ſeverally challenged, becauſe they had nothing within the Hundred, and found two onely of the Hundred not impanelled, whereof the one came not, and becauſe they were of the next Hundred, and the moſt able Knights of the County, and there were no more Knights within the Hundred, and the King a party, the Array was not quaſhed, but an *octo tales* of the Hundred granted; *Quare* if the King were not party, *Trin.* 25 *Ed.* 3. *fol.* 25. *Chal.* 122.

An Array made by the Coroners was challenged becauſe there was none of the Hundred, and the Juſtices ſaid, if there be none ſufficient there, nor out of the fee of the party, and for that reaſon they return the Jury of the next Hundred, this ought to appear by the return of the Sheriff or Coroners, yet it being found by the Tryers, that there were none ſufficient there, the Array was affirmed, 45 *lib. Aſſ. P.* 1. *Chal.* 123. *Vide Diviſ* 24.

An Aſſiſe in two Towns, in two ſeverall Wapentakes, and no Juror of the one Wapentake put in, whereby the Array was quaſhed, although both guildable, 28 *lib Aſſ. P.* 38. *challenge* 141.

An Array challenged, and ſix Tryers choſen by aſſent, and it was confeſt by both, that there none of the Hundred but onely the ſix Tryers, and they ſhall not be challenged before that two be ſworn of the principall panell, and afterwards by conſent the inqueſt remained for want of Hundredors, and after this by the Court, the party had Challenge to the polles. *Copley*, the entry is, *quod quidam venerunt & quidam non, & comparentes non habent* within the Hundred, nor there dwelled without naming them, ſo it ſeems he challenged them not again, *Quare* of this obſcure reaſon, *T.* 22 *Ed.* 4. *challenge* 62.

A Juror once tried indifferent ſhall not be challenged afterwards, becauſe he hath not within the Hundred, *Tr.* 9 *Ed.* 4. *f.* 16. *chal.* 55. 27 *H.* 8. *fol.* 31.

Where the Countrey is to come of the body of the County, it is no Challenge to the Juror that he hath nothing within the Hundred, for no place is limited from whence the Countrey ſhall come, 8 *H.* 6. *fol.* 34.

If

If a Juror hath nothing within the Hundred, but within a Leet to which the Hundred comes together, it is ſufficient, 19 *Ed.* 4. *fol.*5.

XVIII. *Challenge for inſufficieccy, and what ſhall be ſaid to be inſufficient, and where* Ceſtuy que uſe.

IN a Replevin where the Avowry is for Rent, it ſhall be good Challenge, that the Juror cannot expend 40.s. but not if he avow for damage feaſant, but *Fitzh.* thinks it all one, 4 *H.*6.*fol.*21. and holden a good Challenge where one avoweth for damage feaſant, 7 *H.*6.*fol.*25.*Chal.*22. *and* 10 *H.*7.*fol.*14. but contrary 16 *H.*7.*fol.*14.

Alſo this is a good Challenge, when the iſſue is upon the miſnomer of a Town, 10 *H.*6.*fol.*8.*Chal.*30. and where the iſſue is *hors de ſon fee*, 9 *H.* 7.*fol.*1.*&c.*

But in a detinue of an Obligation of 40 s. and declares to the damage of 40 s. it is ſtufficient if the Juror have 20 s. or a Mark, for this is not to recover the ſumme but the writing, 10 H 6. *fol.*7.*Chal* 29.

In an Action reall to the damage of 20 Marks, the Juror ought to have 40 s. Land, *M.*10 H.6.*fol.*8.

In debt or treſpaſſe if the debt or damage amount not to 40 s. it ſufficeth that the Juror have one Mark of Land, *M.* 19.H.6.*fol.*9.*Chal.*32. *anno* 2 H.5.*cap.*3. but if the debt be but 20 l. and he declare for 20 l. damages, the Juror ought to have 40 s. Land by the Statute, *P.*9 H.5.*fol.*5. *Chall.*71. So in treſpaſſe upon the Statute to the damage of 40 Mark, H. 10 H.7.*fol.*14.

In an attaint the Juror ought to have 20 l. a year Land, if it be not in Burroughs or Cities by the Statute, *anno* 15 H.6.*cap.* and it is intended as well of Cities which are Counties in themſelves, as of others, *M*,12. *Ed.*4.*fol.*13.*chal.*59. and ſee where a Juror hath 20 l. land, but had not ſued his Livery of the King, yet adjudged ſufficient, *M.*20 H.7. *fol.*3.

A Iuror being examined, ſaid, that he could ſpend but 5 s. but the tryers ſaid that he was ſufficient, whereupon he was ſworn, *M* 3 H.4. *fol.* 4. *chal.*78.

A Juror was challenged becauſe he had not ſufficient, and it was found that *T.* was ſeiſed for life, the reverſion to the wife of the Juror, and *T.* leaſed his eſtate to the husband and his wife for Rent with condition to reenter, and held a good Challence &c.7 H.4. *fol.*1.

A Juror challenged becauſe he had ſold his Land after that he was impanell'd, ſo that he had not now. *Vavaſor*, yet the land ſhall be bound to iſſues, becauſe alienation is his own act, but if he hath Land in right of his wife, or for the life of another, and the wife or *Ceſtuy que vie* die after the impanelment, he ſhall not be ſworn, becauſe it is the act of God, and the

Land

Land is not liable to iſſues. *Davers* and *Wood*, he ſhall not be charged to attaint in the Land, and this Challenge is given, becauſe men who have Land, will the more often ſay the truth for their ſafeguard, but grant them that the iſſues may be levied on the alienee *&c.* but ſithence it appeared that hé had not aliened, but bargained his Land, therefore he was ſworn, *Ideo quare M.*12 H.7. *fol.*4.

A Iuror ſhall not be charged for Land which is ancient demeſne, but for his Charter Land which he hath for life in his own right, or in the right of his wife *&c.* within the County, *M.*9 H.7 *fol.*1.

Alſo enquiry ſhall be whether any be ſeiſed to his uſe whereof he takes the profit, H.9.H.6. *challenge* 27.

Where the damages were 40 Marks, the Roll was raſed and made 39 Marks, yet the Challenge good that the Iuror had not 40 s. Land, *M.*18 *Ed.*4. *fol.*13.

There ſhall not be a Challenge to a Iuror in *London* that he hath nothing in the Ward by the Statute *de anno* 7 H.7. *cap.* 4.

In an accompt of the receipt of 100 l. to the damage of 100 l. it is no Challenge that he hath not 40s. Land *&c.* 10 H.6 *fol.*19.

XIX. *Challenge, where the King is party to the action.*

IN a *Quare impedit* by the King againſt two, the one challenged a Iuror, becauſe he was of the Livery of the King, *Non allocatur*, becauſe hee ſconcludes not to favour, P. 3. *H.* 6. *challenge* 17. But ſee upon traverſe of an office, holden no challenge to the array, that the Sheriff favours the King more then the party, for ſo he ought to do, but ſome ſaid that it is a good challenge, that the Sheriff was a waiter at the Kings Coronation, or other ſuch manuall ſervant, *M.*22 *Ed* 4. *challenge* 63. *vide* accordingly of the ſpeciall matter, 4 *H.*7 *fol.*8. *challenge* 65. and that he was but a ſervant, and favourable, is no Challenge to the Array, 4: H. 7. *fol.*3.

And againſt the King, a man may not challenge generally, but ſpecially as that the Sheriff is his adverſary, and ſuch are granted, 4 H.7. *fol*8. But in the book, one did challenge a Juror againſt the King, and ſhewed no cauſe untill the pannell was all over peruſed, as in the caſe of a common perſon, *M.*6. *Rich.*2. *challenge* 105. But ſee, 38 *lib. Aſ. p.*22. *challenge* 126. he was put to ſhew cauſe in certain, becauſe the King was a party.

It ſhall be a good challenge for the King in an information, that the array is favourable; without ſhewing any ſpeciall matter, 4 H.7. *fol.*8. *challenge* 65. and ſee there, that after the array affirmed, the King challenged for another cauſe, *&c.*

Upon an indictment of champerty, the King did challenge the array, becauſe the Sheriff had purchaſed parcell of the land of a ſtranger, whereupon

upon the array was quaſht, 44 *Ed.*3 *fol.*38. *challenge* 98.

In an Aſſiſe of a Bailiwick by an Abbot, the *Diſtringas* traverſed, becauſe the Office is amortized. *Shard*, this inqueſt is at the charge of the parties, and is not *Quale jus*, and the King is not party, alſo the Office is not amortized, *Tr.*16 *Ed.*3. *challenge* 107. But if it be found for the Abbot in right againſt *T.* and a Writ awarded to inquire of the colluſion, the King ſhall not challenge, becauſe the Jurors are Tenants to T, for his right is now in queſtion, *Hil.*34. *Ed.*3 *challenge* 175.

The array was quaſht, between the King and others, becauſe the Jurors were not ſufficient, although it was ſayd, that where the King is party no challenge ſhall be to the array, for the party, and the array quaſht by the examination of the Juſtices, 38 *lib. Aſſiſe p.* 19 *challenge* 129.

If a man outlawed for felony, ſaith, that he was ſo ſick at the time that he could not, *&c.* and the King hath the reverſion, the party ſhall have his challenges, The ſame Law is, if a man who abjures, ſaith that he was taken out of the way, *&c. M.*4.H.5.*challenge* 153. *M.*11.*R.*2. *challenge* 166.

A Commiſſion to enquire of Nuſans in *Thames*: to the Nuſans of the City of *London*, there was no challenge to the array that it was made by the ſheriff of *London*, becauſe the King is a party, and it is his ſuit, T.19. *Ed.*3. *Bar.* 279.

In an Aſſiſe by an Abbot, the King challenged not, becauſe the Bailiff of Dean made the array, becauſe he is not party to this Action, although he claims Mortmain, T.16. *Ed.*3.*challenge* 107.

Againſt the King, the party ſhewed that the ſheriff is his coſin, and prayes proceſs to the Coroners, yet although the Kings Serjeants did not confeſs it, whereby proceſs was awarded to the ſheriff, the King ſhall not challenge afterwards for that cauſe, but well for another, H.4 H.7.*fol.*3. *Lege.*

XX. *Challenge after Challenge tryed or adjudged* Nul. *and Challenge to the array after it was affirmed, or after Challenge to the Polles, and where, and when one ſhall challenge peremptory.*

IN a Replevin, one tryed ſufficient for his free-hold, was challenged afterwards for favour, 7 H 6.*fol.*25. *challenge* 22. but challenged for favour and found indifferent, he may not be challeeged afterwards, becauſe he hath nothing in the Hundred, 9 *Ed* 4 *fol:* 16.*challenge* 55.

But in a *Juris utrum*, one was challenged who had not the view after the Writ, *Belknap* this is no challenge becauſe he had ſeen the land, and did know it before, whereby he was ouſted, and challenged again, becauſe Coſin, and that was tried, *M.*6.*R.*2.*challenge* 102.

A Juror

A Juror was challenged, becauſe the Defendant confeſſed that he was joint-tenant with them, in whoſe right he is juſtified, and it was held no challenge, without concluding to favour, wherefore he ſayd ſo, and likewiſe that he is not ſufficient, and becauſe the Juror is not party, nor any freehold is to be recovered, it is no principall challenge. *Quare*, for in the book at large he was drawn, *p.* 7 H.6. *fol.* 47. *challenge* 24.

That a Bailif hath no robes, is no challenge, but good if he ſaith further that he is of his counſell, and hee was received to ſay ſo, 8 *lib. Aſſiſe. p.* 23. *challenge* 7.

A Juror was challenged and found indifferent, he was called for and appeared not, whereupon both parties challenged him to have him drawn, and he was not, becauſe he had made contempt, but was fined for not appearing, 36 H.6. *fol.* 27 *challenge* 17.

Vide Diviſ. 8. Where the one releaſeth his challenge, and then the other makes challenge, and it was there ſaid, if a man be arraigned upon indictment of felony, and challenge all the Jurors by reaſon, when the panell is read through he might challenge all peremptory and relinquiſh the cauſe, *M.* 37 *H.6. fol.* 8 *Challenge* 48. But ſee in an appeal where hee challenged one becauſe he was procured, and it was found he was not, he may not challenge that Juror peremptory, but might at the beginning *H.*10 *H.*4. *fol.* 9. *Challenge* 180. *Vide infra*; *C.* 9. *H.*5. *Tr.* 14. *H.*7.

A man being arraigned, challenged thirty ſix peremptory, and was hanged, *H.*3 *H.*7. *fol.* 2. *Coron.* 56. yet 3 *H* 7. *fol.* 12, *challenge* 51. it was held ſo, in the time of *Ed.*4. that he which challenged thirty ſix, ſhould be put to his pennance, *&c.*

In an appeal, it was holden, that he who is ſworn before upon the ſame panel, which remains for default of Jurors, ſhall not be challenged peremptory afterwards, nor without new cauſe, *&c.* 9 H. 5. *fol.* 7. *challenge* 72: But the contrary was holden by *Fineux*, becauſe peremptory challenge implyes cauſe, unleſs the other challenge were at the ſame day that the peremptory was, *&c.* 14 H.7: *fol.* 19.

In an appeal againſt many, a peremptory challenge by one, was allowed for the others, and then the Plaintiff challenged the array, and where he had but one *Venire facias* before, he now prayed to have ſeverall *Venire facias*, T. 9 *Ed.*4. *fol.* 27. *challenge* 56.

Array remains for default of Hundredors by conſent, where none were of the Hundred but the Tryers, and the Court thought afterwards the parties ſhould have their challenge to the polles, But *Copley* held the polles affirmed upon ſuch matter, becauſe the entry doth not name the Jurors, when they remain, *vide librum*, alſo there were ſix tryers, where there need to be but two, So four Hundredors beſides them, wherefore it ſhould be error to ſuffer the Array to remain, *per Chok*: But *Brian* ſaid it is well done, for the names of the Jurors are not entred, be the Array quaſht or affirmed, and the Array is affirmed when it remaines for ſuch cauſe, *M.* 21 *Ed.*4. *fol.* 76. and *Trin.* 22 *Ed.*4. *challenge* 62.

One challenged the polles without ſhewing cauſe, and afterwards challenged the whole Array, becauſe made by a maintainer of the part of the Plaintiff, and becauſe the firſt challenge was not tryed, he was allowed to have this challenge of the array, after that to the polles, and upon this tryed againſt him, he did challenge one of the polles becauſe he had taken mony, Tr: 13 *Ed*: 3: *challenge* 108.

But in attaint, the polles were tryed of the one part and the other, as well the *Octo tales* as the principall panell, and many drawn, and afterwards the Plaintiff would have challenged the array of the *Octo tales*, and was not allowed, becauſe he had challenged the polles before, 34 *lib. Aſſ. p.* 6. *challenge* 27.

And the array challenged by the Defendant, and affirmed, and diſcontinued by the not coming of the Juſtices, at the re-attachment, the Defendant challenged the array, and becauſe nothing of the Record remained but the originall and the panell, the challenge ſtood, *M*: 13 H: 4 *fol*: 10: *challenge* 155.

And if the Plaintiff hath a *venire facias* ſerved, and it remaines by default afterwards, he ſhall not ſay that the Sheriff is his coſin, becauſe he did know that before, but may ſay, that the Sheriff is coſin to the Defendant, T: 15 H. 7 *fol*: 9: *challenge* 173.

XXI. *Challenge to witneſſes, or to a Juror, becauſe he is named a VVitneſs to the Deed, or to a Tryer.*

NOte, if there be twenty witneſſes named in a deed pleaded, none of them ſhall be of the Jury, for it ſhall be a full taking them off, but it is no challenge to a witneſs that he is coſin to the party, for the verdict ſhall be given by the Inqueſt, not by them, and the Witneſſes ſhall be ſworne to ſpeake the truth of that which they have ſeene or heard, and if the witneſſes or the inqueſt cannot agree, the verdict ſhall be taken without the witneſſes, and then attaint lyeth, 23 *lib. Aſſ. p.* 11. *challenge* 32. 12 *lib Aſſ. p.* 12. *challenge* 9.

A witneſs in an Aſſiſe was challenged, becauſe he was named a diſſeiſor in the writ, and it was not allowed, notwithſtanding that he hath purchaſed the Demeſne hanging the Writ, for he ſhall not be ſworn upon the ſeiſin or diſſeiſio, and he was ſworn, although it was ſaid that he might, the Tenant of the Diſſeiſor, and the Court ſayd, that they have not ſeen how witneſſes can be challenged, 12 *lib. Aſſ. p.* 12. *challenge* 9.

It was ſayd, That one VVitneſſe alone will not ſerve, 48 *Edw.* 3. *fol.* 30.

In an Aſſiſe, it was ſayd, that the Array might be tryed by Witneſſes. *Stouf* ſayd, not, for his Father may well be a Witneſſe but not a Tryer. *Berr*, if we cannot have tryers, we muſt take the Witneſſes, *&c.* H 19 *Ed.* 2. *Aſſiſe* 409.

But

But ſee in an Aſſiſe, the Witneſſes challenged, becauſe they indicted him of Felony, and allowed, *Quod nota*, 22. *lib. Aſſiſe P.* 36. The like was of the polles.

Tryers choſen, were challenged, becauſe Tenants to the one party, *P.* 21 *H.6. Challenge* 38. and this before any were ſworn upon the principall panell, but where they were challenged for the Hundred. *Bryan* ſayd, it hath not been ſeen, that Tryers may be challenged till two be ſworn of the principall, *P.* 22 *Ed.*4. *Challenge* 62. But one of the *Tales* aſſigned for a Tryer was by the Juſtices drawn, becauſe favourable; and he ſhewed the cauſe of favour; 9 *H.*5. *fol.* 11. *challenge* 73. and it was no challenge to a tryer before tryall, that he is heir apparant to the Demandant by award, 7 *H.*4. *fol.* 1. *challenge* 83 *contra*, that he was God-father to the party, and another was put in his place, *M.* 43 *Edw.* 3. *Challenge* 95.

It is no challenge to a Tryer, that after he was ſworn, he hath married with the party, *p.* 11 *R.*2. *challenge* 165.

XXII. *Challenge, and plea for a Jury, and not for the party, and where a Stranger to the Writ may challenge, and where the Bayliff may challenge for his maſter.*

IT ſhall be a good challenge for the Citizens of *Oxford*, who is impanelled, to ſay that there be ſome forraigners in the inqueſt, for they have a Charter that they ſhall not be ſworn with forraigners, but the Defendant ſhall not plead it, now the Mayor and Comminalty, *M.* 4 *H.*6. *fol.* 6 *Charter* 19. *vide contra*, that the Bayliffs ſhall plead it, 29 *lib. Aſſ. p.* 15 *Conuſans* 60.

Vide that he ſhall not be impleaded out of, *&c.* it was held a plea for the parties, not for the Mayor and Comminalty, and the party ſhall loſe the advantage by a continuance taken, and for that alſo, thoſe of the town which were impanelled out, *&c.* loſe the advantage to plead the ſame charter, that they ſhall not be impannelled out of *&c.* 30. *lib. Aſſ. p.* 1. *conuſans* 61. 29 *lib. Aſſ. p.* 13.

Aſſiſe awarded, and a panell made by the Sheriff, all of one Liberty, where it ſhould have been of two. *Trew* ſaid, that none ſhall plead this but the Lord himſelf, yet the array was quaſht, T. 8 *Ed.*3 *fol.* 22. *chall.* 3 *vide* the caſe *Diviſ*, 11.

It is no challenge in an Aſſiſe for the party to ſay, that the Juror was not ſummoned, *&c.* But good for the Juror himſelf, and the Juror ſhall not be ſummoned to make the view, but the Bailiff himſelf ſhall cauſe him to have the view, *M.*8 *Ed.*3. *fol.* 69. *challenge* 4.

One may not challenge himſelf becauſe he is a Baronet, *&c.* without a Writ out of the Chancery, although it be found by tryers, 35 *H.*6. *f.* 46. *chall.* 44.

Note that in an Aſſiſe the Bailiff may challenge for his Maſter where he appears for him &c. for favour, becauſe of his fee, as of robes &c. to the Array, *lib. Aſſ. P.* 10. *chall*, 15.

Vide Diviſ. 19. That the King may not challenge where the iſſue is joyned at the charge of the parties, *Tr.* 16 *Ed.* 3. *chall.* 107. becauſe he is a ſtranger.

A Bailiff of a Liberty or Guild, may not challenge the Array made by the Sheriff where he ought to have ſent it to him &c. but let him take a Writ againſt him if he will, 30 *lib. Aſſ. chal.* 147.

At a *Niſi prius*, the Bailiff of a Town may not ſhew the Charter, that he ſhall not be impleaded out of for Land &c. for he ought to ſhew in the Bench, 29 *lib. Aſſ. P.* 13. *Conuſans* 59.

XXIII. *Where a Juror may be removed without Challenge by examination of them which are ſworn, and where the party himſelf ſhall be ſworn to ſpeak the truth.*

THE Sheriff returns a panel as made by himſelf, and the Jurors examined ſay, that it was made by the Bailiff, and for this the Array was quaſhed, *P.* 8 *Ed.* 3. *fol.* 22. *challenge* 3. *vide* the Caſe, *Diviſ.* 11.

A Juror challenged was ſworn to ſpeak the truth to the Tryers, if the Challenge touch not his honeſty, *vide* after *Diviſ.* 24 *Hill.* 49 *Ed.* 3 *fol.* 1. *chal.* 100. 23 *H.* 6. *chal.* 19. *M.* 19 *H.* 6. *fol.* 9. and where the Tryers choſen were challenged, becauſe Tenants to the party, and they were ſworn to ſpeak the truth, and they ſaid they were not, *P.* 21 H. 6. *chal.* 38. and when the partie hath ſaid, the Tryers ſhall be asked if he ſaid the the truth, *M.* 3 H. 4. *fol.* 4. *chal.* 78. and upon Challenge that the Aſſiſe had not made view, it ſhall be tryed by examination or by Tryers, 22 *lib. Aſſ. p.* 22. *Triall* 75.

Challenge to the Array made of the people of *L.* the contrary was inquired of, and was found by examination, and therefore the Array was quaſhed, 28 *lib. Aſſ. p.* 18. *chal.* 139. So upon Challenge that the Sheriff is Goſhip and confeſſed by him, the Array ſhall be quaſhed without more ado, *P.* 4 *Ed.* 4. *fol.* 11. *chall.* 51.

XXIV. *Where*

XXIV. *Where Challenge or matter alledged to avoid it ſhall be tryed, and how the Court ſhall demean it ſelf in order and tryall of the Challenge.*

A Juror challenged becauſe Tenant to the party, the Tryers pray that he may be ſworn to ſwear the truth, and ſo he was, *P.* 3 H. 6. *chal.* 19. 19 H. 6. *fol.* 9. *chal.* 32.

All the Jurors were challenged, becauſe none but the Tryers had any thing within the Rape, and one other, the Plaintiff ſhewed that all within the Rape were his Tenants, and prayed that they which were challenged might be ſworn, if found for him, and by the Tryers it was tryed Preſently againſt him, whereupon a *Decem tales* was granted of the ſame Rape, but if it were found for him, *Quare* if the others ſhould be ſworn, becauſe they were challenged before, *P.* 3 H. 6. *challenge* 19. *vide* the laſt Caſe of this *Diviſ.*

If one be challenged and two tryers find him indifferent, now he with the two ſhall try the other Jurors, and when another is ſworn the two Tryers ſhall be put out, and the two tryers ſhall try the reſt, and upon Challenge for inſufficiency they ſhall pray that the party may be examined upon *Voier dire* &c. and they ſhall be examined if he hath ſaid the truth, *M.* 19 H. 6. *fol.* 9. *chal.* 32.

After the Array challenged and tryed, he ſhall not challenge the Array of the *Tales* afterwards, for they ſhall be challenged together, and when both be challenged together the Tryers ſhall be one of the panel, and the other of the *Tales per Port.* H. 21 H. 6. *fol.* 22. *chal.* 67. *lib. Aſſ. P.* 44. *challenge* 143.

The Plaintiff challenged the Array, and the Defendant the *Tales*, and one was taken of the Challenge of the plaintiff, and another of the challenge of the Defendant to try it, *M.* 9 H. 5. *fol.* 11. *Challenge* 73. and ſee both Tryers of the panel were of the *octo Tales*, *M.* 8 H. 4. *fol.* 17.

Upon the Array, and alſo upon the *Tales* challenged for favour, two of the principall panel tryed the Array, and alſo the *Tales*, and quaſht the Array, and affirmed the *Tales*, H. 19 H. 6. *Chal.* 33. *P.* 33 H. 6. *fol.* 21. *chal* 42. be the Challenge for one alone, or for ſeverall perſons, *ibidem*, but if they quaſh the Array, *contra per curiam*, but upon the Array affirmed they ſhall try the *Tales* in the Kings Bench, and the *Tales* ſhall not be tried untill the principall panel be tryed, *M.* 9 *Ed.* 4. *fol.* 46. *challenge* 57.

Vid. Tr. 21 *Jac.* *in B. R. in* Williams *and* Floyds *Caſe it was holden that the Triall of the Array doth much lye in the diſcretion of the Juſtices, and therefore*

20 *Aſſ.* 10. *they appointed one of the Array, and the Coroners to try it. Vide* 27 *Aſſ.* 28. *and* 21 *Aſſ.* 26. *acc. and in the principall Caſe here, the Triall of the Array was by two Attorneys of the Court by conſent of the parties.*

Fic-

The one party challengeth all but one, and the other party challengeth that one. It may be that he did it by Caution to have him tryed whether he be favourable, wherefore the Juſtices would not take one of the Challenge of the Plaintiff, and him for the other, but the three, and the nine for Tryers, *P.*21 *H.*6.*challenge* 38.

The Polles ſhall be tryed by the ſame by whom was the Array, who were ſworn to try the Array, although that the party releaſeth his Challenge to the Array, if he challenge the polles they ſhall try them, 27 *H.*6.*fol.* 26.

In an annuity againſt the Parſon, and layes the ſeiſin in one County, the Church being in another, and iſſue upon a Preſcription, and tried by both, and both panels are challenged, there ſhall be two Tryers, the one of the one County, the other of the other, *P.*34 *H.*6.*fol.*36.*challenge* 43. but ſee that one Juror was ſworn by aſſent to chuſe two others to him to try the other panel, and the Court may chuſe two of the other panel to try this, *P.*11 *H.*4.*fol* 63.*chal.*88. and not one of the one and the other panel, to try both as it was 34 *H.*6.

So Tryers were to try whether the Juror was a Baronet, and found it, yet he ſhall not be helped without a Writ &c. 35 *H.*6.*fol.*46. *challenge* 44.

After that ſix were ſworn upon the principall panel, one was challenged, the ſix tryed him, and they could not agree till another time, and then they affirmed him, if he being called appears not, he ſhall be amerced notwithſtanding the Challenge of both parties, becauſe his contempt appeareth by note of the preignotary, although he be entred upon Record, yet the Juſtices agreed, that if any being impanelled appears not where there be others, ſo as the Jury be full, the Juſtices will not inquire thereof, but at the deſire of the parties, 36 H.6.*f.*27.*challenge* 47. *Bryan* ſaith, there ſhall be but two Tryers, but by conſent of the party, 21 *Ed.*4.*f.*70.

A Juror was challenged becauſe he had an Action depending &c. found indifferent, was ſet aſide, ſo that if there be enow of others, he ſhall not be ſworn, but they ſay, if there be not enow we are agreed that it ſhall be done, afterwards the party releaſed the action depending, and he was ſworn, *M.* 38 H.6.*f.*6.*challenge* 49. One found indifferent was challenged by the other, becauſe he had nothing within the Hundred, and was ſet apart untill it was known whether there were enough of the others, H.3 H.6.*fol.*38.

The Defendant challenged the Array, and it was found indifferent, he challengeth one by poll, it ſhall be tryed preſently, becauſe the Array was found againſt him, but after the Plaintiff challenged one poll, and it was not tryed untill the panel was looked over, becauſe he had not chalged the Array before, *P.*22 *Ed.*4.*chal.*61. *Tr.*43 *Ed.*3.*challenge* 93.

The Jury appeared, and the parties could not agree of two Triers, whereupon the Court cauſed the Plaintiff to name four whom he would have, and the Defendant other four, and then the Juſtices ſaid, take the

third

third and the ſixth of the eight to try them, 4 *Ed.* 4. *fol.*11. *challenge* 92.

And where all are challenged, and they will not agree of Tryers without ſhevving ſome cauſe, and vvill not accept the offer of the Iuſtices, the Juſtices may chuſe tvvo tryers vvithout more ado, *Trin.*16 *Ed.*4.*f.*7. but vvhere the parties agree they may chuſe Tryers, and here the one chuſeth three of the Challenge of the other, and then every one takes one of the ſix to try &c. *M.*18 *E.*4.*f.*18.&c.

The manner of Coſinage not tryed, and the Array affirmed vvere put into an houſe, and the parties prayed that they might have keepers, *& negatur ſedente curia*, but afterwards it vvas granted, *P.*7 *Ed.*4.*f.*4. *chal.*54.

There was an Appeal againſt many, and one *Venire facias*, and the Array quaſhed by the Challenge of one for all, and the Plaintiff prayed ſeverall *Venire fac.* to the intent that the Challenge of the one ſhould not be for the other. *Jenney*, you ſhall not have them, becauſe you have choſen it jointly at the beginning, but he prayed it at his perill, and at a Gaole delivery, if one ſhall challenge peremptory, the Clerk may ſever the felons, becauſe they are not empanelled upon any perſon certain, *Tr.* 9 *Ed* 4.*fol.*27.*challenge* 56.

Of the form of Entry where the Challenge is quaſhed or affirmed, *Vide Diviſ.*20. 22 *Ed.*4. *Chal.*62.

The two Tryers could not agree, and it was the evening of the holy *Tr.* whereupon by conſent of the parties they went at large untill ſuch a day, *H.*7 *H.*4.*fol.*10.*chal* 85. and where two Tryers had tryed divers Jurors, and they and the others of the Jury were commanded to be there again the next day upon a pain, and although the Tryers have eaten at large with their companions, they ſhall be Tryers again, for they were not to give their verdict, *M.*2 *R.*3.*Challenge* 101. but ſee that it is error to diſcharge tryers without giving a verdict, and therefore the party would not releaſe his Challenge after the tryers were ſworn, 21 *Ed.*4.*fol.* 70. but *Fitzh.* ſaid nothing of it, alledging the Caſe of 22 *Ed.*4.*vide verdict*, *Diviſ.*20. concerning it.

A Jury was impanelled of two Counties, and both challenged, and three were taken of the one panel to try it, and two of the other to try it, and both were affirmed, the plaintiff challenged a Juror, and he was affirmed and ſworn, and the Defendant challenged one, and the tryers agreed not, whereupon they were put under guard, and the plaintiff did not proceed untill they had agreed, for one of the one panel, and another of the other ſhall be ſworn by courſe, and becauſe they agreed not that night, the tryers of both panels, and alſo the Juror ſworn, for the plaintiffs were under guard without meat or drink, and after they agreed, and found indifferent, whereby he alſo was ſworn upon the principall panel, and vvhen the other Juror vvas in triall of the other, they did eat and drink, but not the Juror vvho vvas firſt ſvvorn upon the principall panel, untill the verdict

dict was given, and note that the Juſtices would not take on e of one County, and another of the other to be tryers, *P.* 11 *H.* 4. *fol.* 63. *Challenge* 88. *&c.*

If there be three or more tryers, and the greater part agree, this is not to the purpoſe, but they ſhall be under guard till they be all agreed, *Tr.*20 *Ed.*3.*Triall* 68. but ſee where two agree, and the third not, the Juſtices may take the verdict of the two, and commit the third to priſon, *per Curiam,* 29 *lib. Aſſ.Pla.*4.*Chal.*146.

And challenged, becauſe he had an action depending, &c. or that he paſſed at another time againſt him, it may be tryed by oath of the Juror himſelf without the record, but it is no principall Challenge, and ſhall conclude to favour, and inquired by tryers, *M* 8.*H.* 5.*fol.*11.*Chal.*179. and ſee after how a Challenge by record ſhall be tryed, 43 *Ed.* 3.*Chal.* 93 &c.

In attaint the Array and panel were challenged, the Juſtices did chuſe two Knights to try who might chuſe them a Knight and a Serjeant &c. and the two Knights were of the ſame panel, 34 *lib. Aſſ. p.* 6. *Challenge* .127.

Array challenged for favour, tryed by the Coroners, and not by them of the enqueſt, and *Shard* ſaid, the one Triall or the other may be good in Treſpaſſe by Bill, 27 *lib.Aſſ.p.*28 and ſee where it was tryed by the Coroners and one of the panel, 20 *Aſſ.P.*10.*Chal.*15.*and* 138.

In an *Oyer* and *Terminer*, the party challenged the Array, and prayed a triall by others then by thoſe of the Jury, and the Court wou'd not 29 *lib.Aſſ.p.*3.*Chal.*245. and *vide Diviſ.*21. that one witneſſe may be tryer in default of others, 19 *Ed.*2.*Aſſiſe* 409.

In attaint twelve were ſworn and the others challenged, becauſe they had not 20 l. land, but one who made default. *Wangf.* you may now try by tryers if there be others within the County of 20 l.land, and if not they of the next value ſhall be ſworn, and alſo tryers ſworn, if there be more of the value within the County, and this hath been done without being certified by the return of the Sheriff. *Chok.* you cannot inquire, nor ſwear any within 20 l. Land untill he that made default be ſworn, or challenged and tried *per Curiam,* whereupon 16 *Tales* were awarded, 36 *H.*6.*fol.*23. *Attaint.*6.*Vide* where none of the Hundred were returned, and it was ſurmiſed, that all there were Tenants to the party, and this was tried without return of the Sheriff, 45 *lib.Aſſ.p.*1.*Challenge* 123. See where all were challenged, becauſe not within the Rape, and the Defendant ſhewed that all there were his Tenants, the tryers tried this preſently without the return of the Sheriff, and it was well debated, *P.* 3 *H.*6. *fol.*39. and ſee ſuch a ſuggeſtion by one to the *Venire facias* ſhall not be accepted, if the other confeſſeth it not, and then there is no other Challenge for the other party, for this cauſe afterwards, *P.* 22 *Ed.* 4. *fol.*3.

Upon

Upon damage miſtaken, as 20 l. where it ſhould have been 40 Marks, the whole was void, and a new Triall, *M.* 19 *H.* 6 *fol.* 9.

XXV. *Triall of the Array in Aſſiſe or other Action, where as to the polles, and where to ſay, that he was not ſummoned, or not to have the view,* Titul. Trial, Diviſ. 23.

ASſiſe in the Kings Bench, where in a ſpeciall Aſſiſe the tryers ſhall be *ex circumſtantibus*, but of the ſame panel, *P.* 9 *Ed.* 4. *fol.* 5. *Triall* 25.

In a ſpeciall aſſiſe the party ſhewed that the Sheriff was beyond the Sea at the time of the panel, and had made no under Sheriff, the Juſtices examined the under Sheriff, who ſaid that he was the under Sheriff, and the Aſſiſe taken, and a Writ of Error was brought, becauſe the matter ſhould have been tryed by four or five of the Jury, and not by the party himſelf, becauſe it touched his honeſty, and although the Juſtices might rule the exception by their diſcretion without triall, yet becauſe they had tryed it otherwiſe then it ought, and made this triall parcell of the Record, it ſeemed that this Error might be aſſigned, and in reaſon the party ſhall have the averment after the return, for before he could not have exception to it, *per Gaſcoigne & Hulls*; but *Hank* ſaid, if other triall ſhall be then by the diſcretion of the Juſtices, what ſhall be done, if by one Jury he be found to be Sheriff, and by another that he is not &c. *Ad quod non fuit reſponſum. Gaſcoigne*, if the Sheriff himſelf were there, it ſhall not be inquired of, but tried by his Patent, which is of Record, and where proceſſe iſſueth to the Coroners to make a panel, the party avers that the Sheriff made it, and not Coroners, it ſhall be tried preſently by two of the panel, ſo it ſhould be here, *H.* 10 *H.* 4. *fol.* 47. *Triall* 103. 9 *H.* *fol.* 1. *Triall* 36. *Quære*, and ſee where the Sheriff had returned a panel as made by himſelf, the Juſtices examined the Jurors of it, and they found that it was not 8 *Ed.* 3 *fol.* 23. *Diviſ.* 11. *& vide Diviſ.* 23. where the Triall was by examination of the party, and if the under Sheriff or the Bailiff had confeſſed the thing, it had not been to him error, 41 *lib. Aſſ. Pla.* 26. *Chal.* 166. *Diviſ.* 10.

The three tryers could not agree, whereupon the Juſtices took one of the one Challenge, and another of the other to join with them, and all were under guard till they agreed and aſſigned, then the triers themſelves were challenged, and the third ouſted, the ſecond and the third of the three was tried by the other two, and affirmed, and ſworn upon the principall panel, and he with one of the two tryed the other indifferent, and by theſe two tryed good, the third was drawn, and the two ſworn upon the principall, *Tr.* 20 *Ed.* 3. *Triall* 68.

Baſtardy alledged in a Counter-plea of Coſinage, alledged, tryed, by

Tryers in an Aſſiſe, 26 H. 6. *challenge* 163.

What ſhall be done when a Bailiff returns others which had not the view, *vide* 41 *lib. Aſs. p.* 26

In a Writ of right, two of the four Knights were challenged for favour, and two becauſe procurers, the Iuſtices made the two ſuppoſed to be procurers to try the other two, and the other two to try them, and all affirmed, and then they choſe to them ſixteen Knights of themſelves, girt with a ſword, which were of the affinity to neither party, to try and take a place in the Hall, aud they ſhall not chuſe any Serjeant if there be Knights convenient, and the four ſhall not be diſcharged, and empanelled with the ſixteen, and a *Venire facias* awarded, and it was ſaid, that no *habeas corpora* ſhall iſſue here, but ſome held otherwiſe, if one be returned dead, the *habeas corpora* and *venire facias* for another Knight, and he ſhall be tried in Court if he be challenged, *M.* 22 *Ed.* 3. *fol.* 18. *challenge* 119. but it was holden that the challenge to the four Knights good, when they are in the houſe to chuſe the great Aſſiſe, and ſhall not be tried before the Iuſtices *Brain contra*, and the oue Knight ſhall be tried by the three, and upon the drawing of him, the next ſhall be tried by the two, and if they draw him alſo, and another is challenged, a new Writ ſhall iſſue to make to come other three Knights, for the Challenge may not be tried by one, *Nele* moved there that they are Iudges, and it ſhall not be challenged, and therefore held by *Herle* that they ſhall not be challenged now, but when they are put in the panel, *P.* 7. *Ed.* 3 *fol.* 13.

XXVI. *Challenge, becauſe a Baneret, or to Knights in a Writ of right, or becauſe Knights are not returned.*

IN a writ of right, a Knight was challenged becauſe he was a Baneret, and it was holden that he ſhould be ſworn if he be not a Baneret, and holds by Barony, *M.* 22 *Edw.* 3 *fol.* 18. *challenge* 119. but this ought to be certified by writ, otherwiſe it is no challenge, *H.* 35 *H.* 6 *fol.* 46. *challenge* 44.

29 E 3. 2. 15 b. 7. acc. Challenge to Knights in a Writ of right for affinity or other matter, and how, and when it ſhall be taken, and when the four Knights are ſworn, they were commanded to go by the aſſent of the parties, and to chuſe to them twelve others, who did ſo, and afterwards the party ſhall not challenge, becauſe they have conſented, 30 *Ed.* 1. *Itin. challenge*, 172.

Pl. Com. 100. Vi. 9 E. 4 37. 3 H. 4. 11. 34 H. 6. 18. Eliz. Dyer 246. *The Array challenged by the Biſhop, becauſe one Knight was returned, See* C. Lit. 157 acc. *Vide* 27 H. 8. 2 C. 6. part. 54 *and* 4 Eliz. Dyer *the Lord Haſtings Caſe* 208. acc. In a *Quare impedit*, It was holden, That when a Peer of the Realm is

party

party to the iſſue, as Biſhop of *C.* that it ſhall be a good challenge that no Knight is of the inqueſt, *T.* 13 *Ed.*3. *challenge* 115.

An attaint ſhall not be taken without Knights, and if there be not enow within the Wapentake, they ſhall be taken, *De corpore comitatus, &c. M.*17 *Ed.*2. *Attaint* 69. *&c.*

XXVII. *Challenge to a Juror, becauſe he came at the charges of the party, or did eat at his charges, or where favour ſhall be implied, becauſe he is his pariſhioner, or within the others Juriſdiction, Authority, or in awe of the party,* &c.

A Juror was challenged, becauſe he came or ſtayd at the charges of the plaintiff, this is a principall challenge without more ado, though he be an indifferent man, *M.*8 *Ed.*3. *fol.* 69. *challenge* 4. So if he eat at the charges of the plaintiff after the panell, *M.*13 *H.*4 *fol.*14. *challenge* 154. and ſee there the challenge good where the Attornyes of both parties gave Mony to the Jurors for their diet, although the plaintiff would not allow it, but diſavowed it in the Court, 13 *H.*4 *fol.*15. 20 *H.*7.3. *&* 8.

A Juror was drawn, becauſe he had eaten at the charges of the party, depending the ſuit, *M.*22 *R.*2. *challenge* 177.

It is no challenge, that the Juror is a pariſhoner, where the plaintiff is Parſon, *M.* 33. *Ed.* 3. *challenge* 169. and it was in waſt, and in debt it was ſayd to be no challenge, becauſe the right of the parſonage cometh not in debate, 17 *lib. Aſſ. p.*15. *challenge* 14.

Note, Challenge for eating, taken at any time before the verdict, *Ut amicus curiæ*, 14 *H:*7:*fol:* 31: 15 *H,*7. 2 20 *H.*7.3. *&* 8.

XXVIII. *Challenge to a Juror, becauſe an Arbitrator for the one party, or to the Array.*

AN Arbitrator choſen by the one party well challenged, not if he were choſen by conſent of both, although that it was of the ſame treſpaſs, H. 3 H:6:*fol* 24: *challenge* 16. But if he were an Arbitrator in another matter as debt, (where this action is of treſpaſs) and in attaint upon a falſe oath, in forcible entry, if the Sheriff were choſen Arbitrator for the one upon the title, and not upon the matter of the falſe oath, it is no challenge, but being choſen by the one, although it was to be indifferent, it ſhall be a good challenge, for he ſhall not be held indifferent where he is not choſen by both, ſo if being choſen by the one, and hath not choſen of the matter together, it is no challenge: But the Juſtices would adviſe where it was, and it is found that he made an indifferent A- 9 *part* 71.

ward, *M.* 20 *H.* 6. *fol.* 39. *Challenge* 37. 9 *Ed.* 4. *fol.* 46. *Challenge* 57.

XXIX. *What Challenge being good in an action real, is not good in an action perſonall, and where damages are onely to be recovered.*

IN Treſpaſſe the Defendant juſtified by the commandement of two with whom the Iuror is jointenant, and this was not a principall Challenge, becauſe damages onely are to be recovered, but it ought to conclude of favour, *T.* 7 *H.* 6. *fol.* 44. *Chal.* 24. *vide* 10 H. 6. *fol.* 7. *Diviſ.* 18.

XXX. *VVhere cauſe of Challenge ſhall be ſhewed at the beginning and where not.*

HE that hath challenged the Array, it being affirmed, ſhall not challenge the Polles afterwards without ſhewing cauſe preſently, but if he had not challenged the Array, he might go through the Panel, without ſhewing cauſe to the Polles, *P.* 33 *H.* 6. *fol.* 21. *Chal.* 42. which of the firſt point agreeth, *P.* 22 *Ed* 4. *Chal.* 61. and with the other agreeth, *P.* 7 *H.* 4. *fol.* 41. *Chal.* 81. *& T.* 43 *Ed.* 3. *Chal.* 93. *Tr.* 20. *Ed.* 3. *chal.* 116. and if after the Tryers be ſworn, the party releaſes his Challenge to the Array, he ſhall not challenge the Poll without ſhewing cauſe, for the releaſing affirms the Array, *M.* 27 H. 8. *fol.* 26.

In an Appeal againſt, many one challengeth the foreman of the Jury, and he was compelled to ſhew cauſe preſently, but he ſhall not be tried till the panel be gone through, becauſe none is yet ſworn to try him, but in an Aſſiſe he may challenge generally and not ſhew cauſe till the Panel be gone through, and after that ſome of the enqueſt be ſworn, another was challenged and tried preſently, and the firſt man challenged was tried, and the Challenge diſallowed. Now another of the Defendants would have challenged him, and could not, becauſe he did it not before, ſo becauſe ſome of the Defendants confeſſed that they were Clerks, they were removed upon their Challenge, and yet they ſhall not demand their Clergy, *M.* 1 H. 5. *fol.* 10. *challenge* 70.

In attaint the panel remained for default. It ſeems that although that one of the firſt Jurors which was ſworn ſhall not be challenged afterwards, unleſſe for ſome new cauſe, yet the panel of them ſhall be peruſed through, as if they were ſworn, and then he ſhall ſhew cauſe, and ſhall be tried, *M.* 22 *Ed.* 4. *fol.* 1. *challenge* 64.

Note

Note although the King be party, the other party which challengeth ſhall not be compelled to ſhew cauſe of the Challenge untill all the panel be gone through, *M.* 6 *Ri.* 2. *chal.* 105. *vide contra* adjudged, 38 *lib. Aſſ. P.* 22. *chal.* 128. but 6 *Ri.* 2. the Juſtices ſaid, that in Caſe of the King it is not as in caſe of a common perſon.

XXXI. *Where Challenge may be to Juror upon an Enqueſt of Office.*

IN a *Quale jus* to inquire of a Colluſion upon a recovery by a Prior, the King challenged the Jurors becauſe they were Tenants to him who loſt in the former Action, and not allowed, *H.* 34 *Ed* 3. *Challenge* 175.

It was held, that in a Writ to inquire of Waſt, the party may have Challenge to the Array before the Sheriff, and alſo to the Polles, but not in a Writ to enquire of damages, 2 *H.* 4 *fol.* 3. *attaint* 13.

In *andita querela* iſſue was taken upon the payment of a leſſe ſumme, and payment proved, whereupon he prayed Judgement, and the Court awarded a *Venire facias* to the ſame Enqueſt to aſſeſſe damages, and they would not tax themſelves, and the Defendant ſhall not have Challenge to them, unleſſe for ſome cauſe of later time happened, *P.* 22 *Ed.* 3. *fol.* 5. *Barre* 283.

XXXII. *What things diſable a man from being of any Jury.*

IT hath been adjudged a good Challenge that a Juror hath been attainted in an attaint, or in a conſpiracy, but it ſeems it is not ſo of an attainder for forging of falſe deeds which is a new Action, *M.* 33 *H.* 6. *fol.* 55. *Chal.* 41.

It ſhall be a good Challenge that Juror is a villain, *Tr.* 9 *Ed.* 4. *fol.* 16. *Challenge* 55. and the Sheriff ſhall be amerced for ſuch return, 26 *lib. Aſſ. P.* 28. *Chal.* 135. An Alien born in *Flanders* may well be challenged, although he hath been ſworn to the King, and hath been in *England* from his infancy, for that doth not make him a Denizen, *M.* 14 *H.* 4. *fol.* 19. *Chal.* 91.

An Indictment was held void, where any of the Indicters were outlawed of Felony, at the time of the indictment, and the Indictee alledged it upon his arraignment, where properly it ought to have been alledged before the Enqueſt taken, yet it was held *ut ſupra*, and the Indictment adjudged void, *H.* 11 *H.* 4. *fol.* 40. *A. Indictment* 25. ſo when one is excommunicated, *ibidem.*

XXXIII. *Where*

XXXIII. *Where Challenge ſhall not be allowed becauſe it is the ſame panell, which was another time returned by the Sheriff, and quaſht.*

A Panel returned by the Coroners was challenged, becauſe the ſame was returned by the Sheriff another term and quaſht, yet not allowed, *H.25 Ed.3 fol.37. Chal.121.* the panel made by the Bailiff being of the parties Counſell was quaſht, and proceſſe to the Sheriff who returned the ſame panel, and it was not quaſht, but there the Sheriff returned alſo that there were no more ſufficient in the Hundred, *33 lib. Aſſ. P.12. Chal. 126. vide Diviſ.43.*

CHAMPERTY AND MAINTENANCE

I. *What Feoffment, Sale, or Gift, ſhall be ſaid Champertie, what not.*

IF one maintains the Demandant, who alſo recovers and enfeoffs the Maintainor, Champertie lieth. So where one maintains the plaintiff in Debt to have part of the money &c. 47 *E.*3.9.*champerty* 4. and a Feoffment Sale or gift depending the ſuit, is holden Champerty of it ſelf, but not if he purchaſe after Judgement, becauſe there is no ſuit then depending, but that is to be underſtood where he did not maintain before, 8 *E.*3. 13.*champerty* 3. And in Champerty upon Proceſſe returned ſuch a day, the Defendant ſhewed that he purchaſed before the Writ returned, and he was driven to traverſe that he did purchaſe to maintain pendant the Writ, and the plaintiff did aver that he did, and then ſhewed the date of his Writ, 30 *E.*3.3.*champerty* 7.

See 6.E.3. Champerty 10. the Writ lieth as well againſt the ſeller as the Purchaſor.

It was ſaid by the Court, that if I bargain for Land before the Writ brought, and afterwards Livery and Seiſin is given me, this is not Champerty, *M.* 19 *R.*2.*champerty* 2. and therewith ſeems to agree, *Fitz. N.B.*172. But ſee 30 *E.*3. before, and 9 H. 7. 18. where the Defendant pleaded the ſame matter, and further traverſed that purchaſe to maintain, and yet it was ſaid, that if a man take upon him to maintain or purchaſe before the Writ to maintain, if he do not in *facto* maintain, that Champerty will not lie, *vide* 30 *Aſſ.* 15. *champerty* 11 It is holden no plea that he did not purchaſe pendant the Writ, if he do not alſo traverſe the taking upon him to maintain &c. See the Statute of *Articuli ſuper chartas, cap.*11.

Vid. Plo. Com. 465.

A Leaſe taken of Lands for years is Champerty, 30 *E.* 3. 3. *champerty* 7.

If a man covenant by Deed or without Deed, that I ſhall have the Rent of the Land in demands, to maintain the ſame is Champertty, but a Rent granted out of other Lands is not Champertty, but if he do maintain, Maintenance lyeth, *F.N.B.*172.

II. *Where*

II. *Where a Feoffemnt or purchaſe hanging the Writ, ſhall not be Champerty.*

CHamperty, ſuppoſing that he did maintain *J. N.* who gave him part &c. the Defendant ſhewed that one *B.* was ſeiſed, and enfeoffed the ſaid *J. N.* upon condition, and for the condition broken entred, hanging the ſuit, and did enfeoff him without that he had any thing of the Feoffment of *J. N.* yet becauſe he came to the Land, depending the ſuit, he was forced to traverſe the purchaſe to maintain, or the maintenance, *P.* 31 *Ed.*3. *Champerty* 3. but 19 *R.*2. *Champerty* 15. he did traverſe the Feoffment of *J. N.* onely, and it was admitted good, and the cauſe ſeemed to be, becauſe it is ſufficient to traverſe that which the party alledgeth for cauſe &c. but 30 *Aſſ.*15. agrees with 31 *E.*3. before.

Note that a purchaſe hanging the Writ is not Champerty, if it be not to the intent to maintain, which is denied by all the Serjeants, for that by intendment he will afterwards maintain, *P.* 32 *E.* 3. *champerty* 6. But ſee 4 *E.*2. *champerty* 12. that it is not Champerty without the intent, and therewith agrees *F. N. B.* 172. of a purchaſe *bona fide. Vide* 21 *E.*3.52. *Champerty* 8.

But ſee 8 *E.*4.13. agreeing with the Serjeants, and that the purchaſe hanging the Writ doth imply Maintenance, if the Writ be not brought by coven, to the end he ſhall not alien his Lands &c. *champerty* 3.

In Champerty upon a Purchaſe hanging the Writ, the Defendant ſaid, that he was ſon and heir of the vendor, and it was holden no Champerty becauſe excepted by the Statute of *Articuli ſuper chartas cap* 11. the gift was to the ſon in Frank Marriage, *T.*6 *E.* 3.33. *champerty* 10. *F. N. B.* 172. *acc.*

It is holden *per curiam*, that if I make a Leaſe of Lands to *T.* for life, and *Præcipe* is brought againſt *T.* and hanging the *Præcipe* he doth ſurrender to me, that it is not Champerty, wherefore the plaintiff traverſed that I had nothing in the Land before the Writ, *M.* 17 *E.* 2. *champerty* 14. *F. N. B.* 172. *acc.*

It is holden, that if the Tenant make a Feoffment to his uſe, hanging the Writ, that it is not Maintenance. *M* 8 *E.*4.13. *champerty* 3.

III. *Where Champerty ſhall be without Feoffment, Gift, Sale, or Grant upon promiſe in an Action reall or perſonal.*

IN Champerty the plaintiff declared, that the Defendant did maintain in a *Subpæna* to recover a debt, and to have part of the money, the Defendant ſhewed that the ſaid *A.* was a ſtranger born, and was indebted unto

unto him, and promiſed him payment if he did recover, and that thereupon he went with him to councell, *&c.* and it was holden a good excuſe, for the intereſt which he had in the ſame, 15 *H.*7.2.

Maintenance upon a promiſe to have part of the mony in debt, or *Precipe*, is Champerty, although the action doth depend, ſo as he hath no loſſe, 47 *Ed.* 3. 9. *Champerty* 4. *H.* 21 *Ed.*3. 53. *Champerty* 8 And it was holden, that the Writ doth lye upon an undertaking, though he doth not after purchaſe, and therefore it was holden no plea, that he did not purchaſe, hanging the Writ, 30 *E.*3.*champerty* 11.

1. *Ma. Dyer* 95 *If a man take money to maintain, although he doth not maintain, it is Champerty and Maintenance.*

T. is bounden to enfeoff me if I do recover the land in his name, now if I do recover it, and he doth enfeoff me, it is Maintenance and Champerty, *M.* 42 *E.*3.23. *Barr* 190.

IV. *What perſon ſhall have the writ, and where the King, or another party, who was not party for the King.*

Kirton ſaith, That in an Aſſiſe Champerty lyeth, as well for the Diſſeiſor as for the Tenant, and the one may have one writ, and the other another writ, and the husband alone may have Champerty upon maintenance in an Aſſiſe againſt him and his wife, or he may joine his wife in the writ if he pleaſe, and it is not materiall which of them was Tenant, *P.*47.*E.*3.9. *champerty* 4.

Champerty lyeth for the King without any indictment, and without information by matter of Record, becauſe that the ſtatute is, that the Juſtices ſhall ſend to enquire &c. of the Lacheſs, *&c.* and the Writ requires not that the party demandant ſhall ſue, and if the party wil not ſue, it ſhould be hard to ouſt the King, *T.*12 *Ed.*3.*champerty* 9. And ſee 3 *E* 3. *Itin. North. champerty* 13. where *Scrope* gave Judgement accordingly; but *Hill* there ſayd, that the Action is given only to the Tenant to puniſh the Champerty, and not to him who is Informer; But ſee the Statute of *Articuli ſuper chartas* 11. which gives the ſuit to the party for the King, or for any other who will ſue for him, and the forfeitures to the King and Informer, *vi* 21 *Ed.*3. 52.

In a Writ of Champerty, where the Writ did abate for falſe Latine, yet the party was put to anſwer to the Kings ſuit, 17 *Edw.* 2. *champerty* 14.

This ſuit ſhall be ſayd the Kings ſuit, yet a man may ſue forth an Originall out of the Chancery, or have a ſpeciall Writ to the Juſtices, to enquire and determine, *F.N.B.* 172.*C.*

V. *Where the party in Champerty, ſhall finde Sureties for the profits.*

VPon this Writ abated, the Defendant was put to anſwer to the King, and the iſſue joyned was upon a ſurrender, and the Defendant found Sureties to attend the iſſue, and to anſwer the profits in the mean time, 17 *Ed.2.champerty* 14.

VI. *The forme of the Writ, and Declaration in Champerty.*

THe King in this action need not make any ſpeciall Declaration; but alledge only, that the Defendant did maintain, *&c.* becauſe in the Action he is not to recover damages, but to puniſh the party *&c.* but in a *Quare impedit*, he ſhall ſet forth the place and the day of the maintenance in the firſt action, *&c. T.*12 *E.*3 *champerty* 9. and the date of the firſt originall need not be ſhewed, *H.*30 *E.*3 3. *champerty* 7.

The Declaration is good, which ſuppoſeth that he did maintain, hanging the ſuit, though the Writ be that he did maintain, *Pro parte habenda, &c. Thorp* ſaid, that there is no other writ, 30 *Aſſ* 15 *champerty* 11 P. 31 *E.*3.*champerty* 15. Alſo where the Writ ſaith, *Adhuc manu tenet*, and by the Declaratioh it appeareth, that the plea is determined, yet all is good, for peradventure the party durſt not bring an Attaint, for that default, 47 *Ed.*3. 9.*champerty* 4. So where the Writ is doubtfull, and by the Declararion it appeareth, that the maintenance is of the Demandants part, yet it is well, *H.*21 *Ed.*3.52. *champerty* 8.

VII. *Againſt whom Champerty lyeth.*

THe Statute is a prohibition againſt the purchaſor, and ſeller, and yet the writ brought againſt the purchaſor only, is good, 30 *Aſſ.*15. & 31 *Ed.*3.*champerty* 5. And ſee the Statute which gives puniſhment at the will of the King againſt the Officer who maintaines, and puniſhment as well to the ſeller, as *&c. Weſt.* 2. *cap.* 49 *and* 50. But ſee the puniſhment to looſe the land, is given againſt the purchaſor only, and ſo it is of goods by *Articuli ſuper chartas*, 11 *and* 12. and impriſonment for two years is given againſt the purchaſor and aſſentors, by the ſtatute of *Berwich* 11 *E.*1. *and* 31.*E.*1. and the Statute of *Weſtm.*1.*cap.*26. gives puniſhment againſt the purchaſor at the will of the King. No man ſhall get, buy, or promiſe to buy any title of Lands or Tenements, but of ſuch as they or their

their Anceſtors have been a year in poſſeſſion, reverſion, or remainder, upon the paine the buyer, or ſeller forfeit ſeverally the value of the and, the one half to the party that ſueth, *&c.* 32 *H.* 8 *cap.* 9. It muſt be ued within the year. See the definition of Champerty, *Vi.* 33: *E.* 3.

VIII. *Where Maintenance may be juſtified for Conſanguinity, add what maintenance it ſhall be.*

IF my coſin, who by poſſibility may be my heir, giveth his proper goods to my councell, this is maintenance upon good adviſe, *T.* 29 *H.* 6. *maintenance* 2. and iſſue was joyned accordingly there in a reall action, 29 *H.* 6 *Iſſue* 83. But in 34 *H.* 6.25. It is holden, that the father may give mony for his ſon, becauſe he is bound to find him, but not ſo of any other coſin; but the book of 29 *H.*6. was, that it was for his ſon who was his Heir apparant, every one may help his coſin to a Lawyer, but he may not give mony, 4 *Ed.*4.32. But ſee 14 *H.*6.6. Where he juſtifies as coſin to him who was arreſted at the ſuit of the Plaintiff, and pleads further, that he was a maintainer for him, and to have the ſum *&c. Barr* 15. It was holden that the brother of one of the commonalty cannot maintain in an action brought againſt the Mayor and comonalty, 21 *E.*4. 38. but otherwiſe it is if the action were againſt his brother, *actio ibid.*

And the Son may maintain his Father, whoſe heir he is by every Law: By *Herle*, and therefore if he purchaſe of his father hanging the Writ, it is not champerty, *Quære*, for it was delivered upon, but it doth not appear that it was for that cauſe, or becauſe the purchaſe was in Frank-marriage to the ſon, *M.*6 *E.*3.33. *champerty*, 10.

vi. 22 *H.*6. *Plow. Com.* 305 *If the father be impleaded, he may enſcoff his ſon for his aſſiſtance of him* 21 H.6.16. *The ſon may give his own mony to his fathers councell, acc, attor.*

IX. *Where Maintenance ſhall be juſtified for affinity, or alliance, and in what manner.*

ONe freind may counſell another, and it is not maintenance, otherwiſe it is of a ſtranger, *M.*22 *H.*6.35: and it was ſayd that a Goſſip may maintain for affinitie; and he who hath married my ſiſter may maintain as coſin or brother may, but then he ought to alledge that my ſiſter is alive, *M.*6 *E.*45. And the Action there was, that he did retain councell *&c.* and I may maintain him who hath married my daughter, and may be at the barr with him, and comfort him, but I may not give money. And *Brian* ſayd, that I may bring my neighbour to a man who hath knowledge in the Law *M.*19 *E.*4.3. and that was in caſe of an attachment in the Chancery.

36 H.6.28. 30 H.6.19. 9 H.6.64. *ac.* 15 *H.*7.2. 22 H.6.35: 34 H.6.25. *ac.*

X. *Where Maintenance may be juſtified by the ſervant, and in what manner, and when the Maſter ſhall juſtifie Maintenance for his ſervant.*

MAintenance was ſuppoſed in an appeal of Mayhem, brought by *S*: againſt the Plaintiff, the Defendant did juſtifie as ſervant, and the other by proteſtation that he was not his ſervant; for plea, ſaid, that the Defendant did perſwade him that he ſhould not agree, and that he would pay his coſts, and afterwards he came with *S*: and payed ſo much, *&c*: It is a good plea if he alledge the giving of the mony to be after the action brought, for there is no maintenance if there be no ſuit at the time, *&c*: *M*.3 H:6.54: And a ſervant ſhall not give mony, 19 *E*:4.3.

And a ſervant retained with me to go to *London*, cannot juſtifie as a ſervant to aid and aſſiſt me in my ſuits, but he who is retained as a dayly ſervant, for no certain ſervice, may juſtifie as ſervant, without ſhewing what kind of maintenance he did, which he cannot do in the other caſe, by *Markham*, *Quare* 39 H:6.6:

No Servant may threaten a Jury, 19 *H*.6.31.

A man may ſignifie to his ſervant who he ſhall take for his councell, the better to ſpeed his cauſe, and may ſtand by him at the bar, 19 *H*.6:30: and a man may pray a Lawyer to be of councel with his ſervant, and juſtifie the ſame in one town where the maintenance is ſayd to be in another town in treſpaſſe, *vi*. 21 H. 7. 15. *Maintenance* 7: The Maſter juſtified the retaining of councell for his ſervant who could not ſpeak Engliſh: *Priſot* ſayd, 34 H:6: That I ſhall not maintain my ſervant who is arreſted for his own debt or treſpaſs: Otherwiſe it is for any thing which he doth by my commandement, which was agreed by the Court, wherefore the Maſter ſayd, that his ſervant prayed him to pay for him forty pence of his wages money, which hee did, and it was holden no good juſtification, for every ſtranger might ſo pay the mony of the ſervant, 34 H.6: 25. *b*. But *Finchden* ſayd, that if my ſervant be arreſted for debt, *&c*. in *London*, or any ſuch priviledged place, I may help him, and ſpend of my own mony by reaſon of the loſſe that I have of his ſervice, otherwiſe it is if he be impleaded in a *Precipe*, *&c*. 21 H.7,40: *Maintenance* 28.

But *Newton* ſaid generally in maintenance upon an appeal of Mayhem, That the Maſter may give of his own mony to the councell of his ſervant, to which the Court agreed, and he may pay the fees for the diſcharge of his ſervant, or lend him mony, but he cannot give mony to the Jury for giving of their verdict, 21 H. 6: 13: and the labour of the Maſter to the Jury to ſhew the truth, was no maintenance, 22 H:6,5.

But it was adjudged maintenance where the Maſter did deliver of his own money to diſtribute *&c*: for his ſervant, 31 H.6,8: *Errour* 32: And it ſeems the Maſter cannot give money to the councell of his ſervant, if the

the mony be not of his wages which he hath in his hands, 19 *E.*4.3. But he may retain councell without giving them mony, 31 *H.*6.1.

XI. *Where the Lord may maintain his Tenant, and he in the Reverſion his Tenant.*

THe Lord or he in the reverſion may maintain their Tenants by *Babington*, and *Paſton*, 9 *H.*6.64. in a *Detinue* of Charters; but that is for ſuch things as do appertain to the Lands, but they cannot maintain in treſpaſs done in lands of another, *M.* 27 *H.*6. *Maintenance* 25. And the grantee in the Reverſion cannot maintain before attornment of the Tenant, but the grantee of a term after the life of the Ter-Tenant, may maintain the Ter-Tenant, 9 *H.*6.64.

And I may maintain my Leſſee for years, or Bayliff, in any thing which doth concern the land, becauſe they ſhall not have aid of me: So if one hath poſſeſſion of my goods; and they be attached, which *Danby* denyed, 39 *H.*6 21.

Treſpaſs brought againſt *J. S.*: who juſtified for a buriall in the Churchyard of the town, and it was holden that every one of the town might maintain him, and ſome ſayd, That the Lord of the Town might likewiſe ſo do although he were not one of the town. *Quare* 18 *Ed* 4.2.

M. 18. & 29. *in B. R. it was adjudged, that if the Cuſtome of a Mannor be in queſtion betwixt the Lord and a Copyholder, all the other Copyholders may ſpend their money in maintenance of the other, and the cuſtome.*

XII. *Where Maintenance ſhall be to a ſtranger, and juſtifiable for the Intereſt which he hath, and becauſe he may thereby ſtrengthen his Title.*

MAintenance was ſuppoſed in a Detinue of Charters, The Defendant ſhewed, that *S.* was ſeiſed of certain lands, and granted the ſame to him, and that the Charters did concern that Land, and that he granted him the Charters, if he could recover them. *Babbington* ſayd, if the grant were good, then *S.* had no cauſe of action, *&c.* and if voyd, then it was void, and then it is maintenance, becauſe the Defendant had no intereſt, therfore we are to ſee if the maintenance was before the grant or after, 9 H.6.64

S. is bound in an obligation to *T.* who is indebted to me, and aſſignes the Bond to ſue in his name, and delivers me the Obligation, *T.* dyes, and afterwards I do put the obligation in ſuit in the name of his Executors who agree unto it, this is juſtifiable maintenance, and if one be bound to *T.* to my uſe, I may ſue the bond or may maintain the Action, if he put it in ſuit, *&c.* *H.* 34 *H.*6, 30. *Maintenance* 14. and in the firſt caſe I may pay councell

councell with my own mony, *Quere* 15 *H.*7.2.

If one lye attached by my goods being in his poſſeſſion in *London*, I am not bounden thereby, and therefore I cannot maintain him, by *Danby*, but I may maintain my Bailiff, and yet judgment given againſt him ſhall not bind me, *vi.*39 *H.*6.21.

Tenant in a *Precipe* makes a feoffment, pendant the Writ, and afterwards looſeth by default, and brings deceit, the feoffment cannot maintain him. 8 *E.*4,13. *Maintenance* 9.

He who is a meer ſtranger, cannot pay councell for me, 21 *H.*6. 16. 9 *E.*4. 32.

It was holden, that the Lord cannot procure his villein to ſue for his goods which are taken, yet it ſhall be for his advantage, ſo where his villein was diſturbed of an Oxe graſſe granted to him, 22 *Ed* 3.15. *Replevin* 38.

If the Debtor pay mony to the councell of the debtee, the ſame is maintenance, 19 *E.*4 5.

XIII. *What Act ſhall be ſaid maintenance by him who hath not to do &c. what not.*

ONe came to a Preiſt, and ſhewed him that a ſtranger had a *Capias* againſt him, and prayed his adviſe, and hee adviſed him to appear at *London*, and to purchaſe a *Superſedeas*, and it was counted no bar, becauſe no maintenance was acknowledged, for which cauſe he was driven to traverſe the maintenance. 22 *H.* 6.35. *and* 39 yet *Priſot* thought it a good barr, becauſe the ſtranger was a poor man living of Almes, *&c.* to which *Martin* agreed, 9 *H.*6. 64.

Priſot conceived, that if a ſtranger came with me to a Lawyer, and prayes him to be of my councell, that this is maintenance, *T.*35 *H.*6 *maintenance* 21. 21 H.6.16. *Maintenance* 20. But one neighbour may inform another of a man learned in the Law, 22 *E.*4.35. But if I ſhew my evidences to a man not knowing the Law, and hee ſay expreſly that they are good, and cannot be better, it is maintenance if he be a Lord, or other powerfull man, *L.*36, H 6. *Maintenance* 22. *M.* 22 H. 6. 5. *Maintenance* 8. See the Statute of 1 *E.*3. *cap.*24 80. 26 *E.*3.*cap.* 3. doth not limit any certain puniſhment.

If a ſtranger be compelled by the Court to ſpeak the truth, and he delivers what he knows of the truth, this is juſtifiable. So if the Jury come to him to have notice of the matter; but if he ſpeak to them of his own accord, he ſhall be puniſhed for maintenance, although that be truth which he ſpeaks, *Per curiam*, 28 H 6.6. *Maintenance* 10. And it is there ſayd, If a ſtranger doth come to the bar, and informes the Jury of his own head, it is maintenance, but not if he be examined by the Juſtices. See the caſe

of

of conſpiracy, 20 H.6.36. of him who was impanelled and was drawn &c. and if a ſtranger come to the bar with me, this is maintenance, though he ſpeak nothing, 22 H.6.5. and by *Priſot* 32 H.6.29.

If a ſtranger give his mony to another to diſtribute to the Jurors, this is maintenance in the firſt, although the other doth not diſtribute it, and if he do diſtribute it, then it is maintenance in them both, 28 H.6.7. *Maintenance* 11.

XIV. *What Act ſhall be ſaid Maintenance in him who may inmeddle, viz. Attorney or the like.*

IF a Serjeant or an Apprentice deliver the Law at the bar for his Clyent, it is lawfull, but if he after ſay to any of the Jury, that he ſhall be beaten if he do not paſs for his Client, this is maintenance, *Ab initio*, 36 H.6.27. *Maintenance* 15.

Alſo it is holden no maintenance for an Attorney to give of his own money to councell by his Clyent, *T.*35 *Hen:* 6: *Maintenance* 27. *Per Curiam.*

And Maintenance doth not lye againſt an Attorney for ſpeaking great words to the party, for he may inform the Jury, but he cannot give them money, for that is Maintenance, but not Embracery. *Hull*, An Embracer is he who taketh to embrace, to lead the Jury, but maintenance doth not lye againſt the party himſelf for giving of mony to the Jury, 13 H:4:16: *Maintenance* 23.

One Juror may perſwade another to be of his mind, as he thinks the right is, but cannot give money, *M:*17 *E:*4:5: and it is a good barr *prima facie*, that he was one of the Jury without any more: Yet he further ſayd, that he had given his verdict, the Plaintiff ſayd, that after verdict he prayed the Steward to give Judgement ſo ſoon as the verdict paſſed, and that was holden to be maintenance in him, 18 *E.*4. 1: *and* 2. See the caſe of conſpiracy, 22 H:6:36:

An Attorney cannnot promiſe a reward, but a Counſellor may take part of the Land for his fee: And one may iuſtifie the return of a panell as Bailiff, and traverſe the maintenance, 13 H.4.19.

XV. *Where*

XV. *Where Maintenance may be juſtified by Pledge, Main-pernor: Bayle, &c. where not.*

Priſot ſayd, that a Surety or Main-pernor, or a Baylor of the body &c. cannot intermeddle in the ſuit, but may come to the barr, and ſee that the parties appearance be recorded, and he who is Surety for the Peace, may not intermeddle in a *Scire facias* againſt the principall, for the breach of the peace, H. 34. H. 6. 25. and 29. But the Mainpernor of him who is arreſted in *London*, *&c.* may promiſe a reward to the Attorney to be diligent, by *Danby*, and *Wangford*, and by *Wangford*, he may give money, but *Quare* of that, but the Bayle upon a *Cepi corpus* returned in Bank, cannot maintain, nor a ſurety for the peace, for they are but to yeild a paine, and not the principall. *Littleton* ſayd, that ſureties in a writ of Error, may ſpeak to the Councell but *Priſot* ſayd, that in treſpaſs againſt two, if one of them do make default, he cannot maintain the other in the iſſue upon the principall, but he may as to the damages, *Quare*, H. 32 H: 6: 29:

And the Main-pernor in debt may well ſue to ſave his maynpriſe, and ſome ſaid the ſame was no maintenance, 14 H: 6: 6: *Bar* 15:

Brian thought it a good bar in generall maintenance, to ſay, that he took the party in the firſt Action to Mayn-priſe, 14 H: 6: 6. 18 *Edw.* 4. 12.

XVI. *Where he that is nonſuit ſhall have maintenance.*

A Man may have an Action of Maintenance after that he is non-ſuit in the Action in which, *&c.* P. 33. *E.* 3 *Maintenance* 26. againſt 7 H. 4: But Maintenance well brought after diſcontinuance, P: 3. H. 6. *Maintenance* 2. *vi.* 7 H: 4 30. The Book is not contrary to 33 *E.* 3. but the Writ ſhall abate, ſuppoſing *Aſſiſam captam*, where it was not *Capta*.

XVII. *Where a man ſhall be puniſhed for Maintenance, although no Record be of the Principall Suit.*

IN Maintenance upon an Appeal of Maheim, it was ſaid, that no Proceſs was ſued in the Appeal but an Attachment, and that returned *Non eſt inventus*, and afterwards the whole was diſcontinued, by which, although the Statue be generall, *viz.* That it is not lawfull to maintain, yet it is to be meant if the party be grieved, which he is not here, *&c.* But the Court ſaid,

ſaid, that he might be arreſted upon the Attachment, and ſo grieved, *P.* 3.*H.*6.53. *Maintenance* 2.

It is holden that if one maintain, ſo as my originall cannot be returned, no action lyeth upon it, becauſe *Nul tiel* Record is a good Plea, *P.* 10 *E.*4.19.*M.*3.*lib.*6.5.4. But it is Champerty to purchaſe before the Writ be returned, if it be afterwards returned, *M.* 30 *E.* 3. *Champerty* 7. and *Newton* ſaid, that to maintain betwixt the date and the return of the Writ is Maintenance, 9 *lib* 54. and ſee a Prohibition in a *Quare impedit* before the Writ returned here againſt him, who ſued in the ſpirituall Court, 2 *E.*4. 12. Contrary of eſtrepment upon a Formedon, before the Return, although the Formedon be delivered upon Record, 18 *H.*5. which is not law by *F.N.B.*60.

In Maintenance of a Writ of Right in Ancient demeſne in the nature of an Aſſiſe, it is not ſufficient to alledge that he did maintain, hanging the Writ, but muſt ſhew the day of the Writ, for here *Nul tiel* Record is no Plea. *Quære*, And no ſuch Plea depending ſhall be tried by the Jury; for ancient demeſne is not recorded here *&c. Vide* 8 *H.*5.8.*Maintenance* 29.

XVIII. *When not guilty, or the generall iſſue ſhall be taken in Maintenance, and what ſhall be a Plea to the Writ.*

NOt guilty is holden to be no iſſue in this Action, but the Iſſue is, that he did not maintain *&c.* *H.*8 *H.*6.37. *Maintenance* 3. but the one or the other ſeemed to be good, 21 H.7.14.

And where the Plaintiff is driven to ſhew eſpeciall Maintenance, as giving money, the Defendant may well ſay, that he gave not any without anſwering to the point of the Writ, 14 H.6. 9 H.7.11.*acc.* And it is no Plea to the Writ, that the Defendant is dwelling at another place, becauſe no Proceſſe of Outlawry lieth in this Action, 18 H.6.37.

XIX: *Where Maintenance ſhall be juſtifiable by reaſon of the uſe of a thing reall or perſonall.*

Ceſtuy que uſe may bring every Action touching the Land in the name of the Feoffees, and may intermeddle in every Action ſued by the Feoffees, and ſo of *Ceſtuy que uſe*, of an Obligation 34 H.6.30. & 33 *Maintenance* 14.

XX. *What ſhall be ſaid Maintenance, to cauſe a man to be indicted.*

Riſot ſaith, that *J.* ſhall have Maintenance againſt him that labours that I am indicted, becauſe it is the Kings action, *Paſton* contrary, 22 *H.*6.5. See the Statute called the definition of conſpiracy, 33 *E.*1. What Maintainors are conſpirators.

XXI. *Where he that recovereth ſhall have maintenance.*

IF I do recover againſt the Defendant, yet I ſhall have maintenance againſt every one who hath maintained in the action, for then the Statute is a prohibition, 7 *E.*4.15. *Maintenance* 17.

XXII. *Where Maintenance will lye for undertaking, without maintaining in fact.*

IN Maintenance, it was ſuppoſed, that the Defendant gave money to *F.* to diſtribute to the Jury, and it is not ſurmiſed that he did diſtribute it to the Jury, yet it is good. *Paſton*, if a man give money to Jurors to deliver their verdict, it is maintenance, though they give no verdict, and although the gift were before they impannelled, *vi.* 22 *H.*6 5. 28 *H.* 6 7. That it is maintenance to give money to diſtribute, without ſhewing to whom to diſtribute it, and if the other doth diſtribute it, it is maintenance in him alſo, 31 H.6 1: *and* 2: But he that takes upon him to maintain, and doth not maintain, ſhall not be puniſhed, 9H.7:18.

XXIII. *Where a Bill ſhal be ſued of maintenance in the preſence of the Court.*

IT was holden, that a bill of Maintenance lyeth, *Sedente curia*, againſt every ſtranger or miniſter who doth maintain, and although the bill doth not expreſſe, that he who maintains is preſent in Court, yet if it doth appear that he doth maintain, *Sedente curia* it is good, otherwiſe it is of a bill in *Cuſtodia Mariſcall.* and it was holden, that if a ſtranger in another county do maintain here by his oath, a bill lyeth againſt him, 22 H. 6. 24. and 26. *Bill* 3.

M.6. Jacobi in the ſtar-chamber, It was adjudged by the whole court, that if a man do aſſiſt one who is plaintiff in that court, it is not maintenance, becauſe it is for the benefit and advantage of the King; but to aſſiſt an informer upon any penall law in another court is maintenance, for which he ſhall be puniſhed.

XXIV. *Upon Maintenance in what Court this writ lyeth.*

IT is holden that maintenance lyeth for maintenance in ancient demeſne, *ex hoc ſequitur*, that it lyeth upon maintenance in a court Baron, *M:* 8. H.5 8. & it lieth upon an attachment in Chancery, 19 *E.* 4 3. and it ſeems it lieth upon maintenance in a *Subpœna quare* 15 H: 7. 2: and the ſtatute of 20 *E:* 3. *c.* 3. forbids maintenance in the Kings courts or elſe where, and the Stat. of 1 3. *R.* prohibits maintenance in the country or elſe where, ſee the penalty there at the will of the King, and the Stat. of 32 H:8: forbids maintenance in the *Chancery*, *White-hall*, *Starchamber* or elſe where whereof land is holden by patent, commiſſion or writ, upon pain of every offence 10*l.* if it be ſued within the year, & maintenance ſhall be enquired of, *ex officio*, by Juſtices of *Niſi prius*, 4 *E.*3. *c.* 10.

The

The ſtatute againſt redeemers doth not appoint any certain pain 20 *E.*3. *c.*4.but the ſtatute of 8.*E.*4.appoints 5 l.by the month againſt the retainor and the ſervant for uſing of the Livery *&c.*and 5 l.for the giver, and 32 H.8 *c.*9.gave 10 l.for every offence againſt an embracor, and the ſtatute of 19 H.7.ſpeaks that the maintainor or embracor in an inqueſt of riot ſhall forfeit 20 l.and be impriſoned. None ſhall give Judgement in the County Court,but a due officer.*Weſt* 1.*cap.* 33.

Juſtices of Peace ſhall inquire of Maintenance by Statute of 37 H. 8. *cap.*7 *Execution of Statutes* 4.

See now the Statute of 32 H.8 *cap.*9. againſt Champerty, and bringing of pretended Rights and Titles, upon which Statute and the Proviſoes, note, theſe points hereby adjudged.

1.That if *A.*be owner of the land in poſſeſſion and B.who hath no right to the land contracts with another for the land, although the grant be utterly void,yet the grantor a nd party are both within the Statute. *Plo.com.*80. *in Partridgescaſe*

2. That if the diſſeiſee, who is out of poſſeſſion contract with another for the land,he hereby maketh his right which was good apprehended right, and the grantor and grantee are both within the Statute.

3.That whoſoever hath the ownerſhip of the Land, that ſuch an owner may at his pleaſure bargain and contract for the land, and need not ſtay a whole year before he make a ſale or contract for the ſame:& therefore the mortgagee who hath redeemed his land, may ſell the ſame within the year: ſo if the diſſeiſee releaſe to the diſſeiſor,the diſſeiſor may ſel the land within the year,and is out of the Statute.So if a man was out of poſſeſſion, and recovers the Land in *ejectione firmæ*, and is put in poſſeſſion by a Writ of *Habere facias poſſeſſionem*:he may ſel the land preſently,ſo it was adjudged, 36 *Eliz.in Com* B. in *Pages caſe* 7 *Car.Regis* in the Kings Bench, in Sir *John Offleys* caſe,and H.8.*Car.*in the Kings Bench,in *King* and *Hills Caſe*. *6 E.6. Bri. Maintenance* 38.

4. If the diſſeiſee diſſeiſe the heir of the diſſeiſor, although he hath an ancient right,yet becauſe his poſſeſſion is not lawfull, if he ſell the land before he hath been a year in poſſeſſion, he is within the Statute, becauſe the heir of the diſſeiſor hath right to the poſſeſſion. C.*Lit.*3 69.

5.That the buying of a Leaſe for years is within the Statute, and he ſhall forfeit the value of the land, but if a man make a leaſe for years to try his title in *ejectione firmæ*,it is out of the Statute,unleſs it be to a great man to ſway and contenance the cauſe. *M* 31 *Eliz in co.*B. *Finch and Cockrams caſe.*

6.That a cuſtome is right, or a pretence to it is within the Statute.

7.That if he be Tenant for life,the remainder in fee by good title, that he in the remainder may obtain the pretended right of a ſtranger,becauſe it is a means to extinguiſh ſuits and troubles. C.4.*part* 26.

8. That if the diſſeiſor makes a leaſe for years or life,with the remainder over for life in tail or fee,he in the remainder cannot take any promiſe or covenant, that where a diſſeiſor hath entred upon the land and recovered it,that he ſhall convey the land to him in the remainder, to avoid the particular eſtates. 24 *H.*8.52. C.*Lit.*369.*acc.*

COLOUR
AND
Matters of it.

I. *In what Actions Colour ſhall be given, and in what not.*

IN a Writ founded upon the Statute of 5 *H.*2. the Colour ſhall be given, as in Treſpaſſe, 33 *H.*6.54.37.H.6.31.

Colour ſhall be given in an action brought upon the Statute of 8 *H.*6. of forcible Entry, 21 *H.*6.39.& ſo ſhall be in a Writ of Entry in the *Quibus* of a diſſeiſin to the father of the plaintif, 9 *Ed.*4.13. So in a writ of entry of a rent of a diſſeiſin made to the peredeceſſor of the plaintif, 19 *E.*4 3.

Vide 7. *Jac. in the Kings Bench in Pigot and Godders Caſe, It was adjudged that colour ſhall not be given in an Ejectione firmæ, becauſe the Plaintiff ſhall be adjudged in by Title.*

Alſo in a Raviſhment of ward, it is agreed, that if the Tenant do not claim by the Plaintiff, that he ought to give Colour, 2 *E.*4 27.

As to Treſpaſſe, or Aſſiſe, theſe are the proper actions, in which Colour ſhall be given.

But no Colour ſhall be given in a Writ of Entrie, in the nature of an Aſſiſe, 21 *H.*6.18. becauſe it is a *Precipe* in its nature.

Alſo in Treſpaſſe *de parco fracto*, or in Reſcous no Colour ſhall be given, 13 *H.*7.11. So in an Aſſiſe of Coven againſt the Lord who improves, there needeth not any Colour to be given, 7 *Ed.*3.6,7. *Br. Aſſiſe* 423. See *C.*10 *part* in Doctor *Leyfields* Caſe, in what Caſe Colour ſhall be given, and the book there vouched.

II. *What matter alleaged ſhall be a ſufficient Colour and what not, as well for the Seiſin of him who is Plaintiff, as for his eſtate.*

IN Treſpaſſe the Defendant ſaid, that *J.S.* was poſſeſſed of certain goods, and made the Defendant his Executor and died; and that he ſeiſed the goods and delivered them over to the Plaintiff to re-deliver back unto him, and he would not re-deliver them; for which cauſe he ſeiſed the goods, and it was holden no good colour, becauſe he did not acknowledge

knowledge the property of the goods to be out of himſelf, 28 *H.*6.4.

So in 21 *H.*6.36. In Treſpaſſe for charters, *&c.* It is now pleaded that the property was to *J.N.* who bailed them to the Defendant, and the Plaintiff took them, and that he did retake them, but in the firſt caſe the caſe had been, that the Defendant did deliver them to *J.S.* who gave them to the Plaintiffe, and he took them by force thereof, and that the Defendant did retake them, that had been good, and ſo is it holden in 7 *H.*6.31. So it ſeems by the Book of 21 *H.*6. If he had pretended that one *J. S.* was poſſeſſed of them and bailed them to *W P.* who gave them to the Plaintiff, who took them, and *J. S.* did retake them, and gave them to the Defendant, for in thoſe caſes he had colour by force of the gift, becauſe he had property thereby: So as it appeareth by theſe caſes, that he ought to alledge a property or ſeiſin, although it be by wrong, and that alſo is proved by the caſes following.

In 21 *H.*6. 40. In Treſpaſſe the Defendant ſaid that *J.N.* was ſeiſed and enfeoffed *J.B.* and that the Land deſcended from *J.B.* to *R.* and from *R.* to his Wife, and that the Plaintiff claiming it by force of a Feoffment, by the Heir of *J.S.* where nothing paſſed &c. and holden a good colour notwithſtanding his eſtate was by wrong, becauſe he was not ſeiſed as here, becauſe his father did enfeoff *J.B.* So in 7 *H.*4.14.

The Defendant did juſtifie by the Kings Letters Patents and gave colour by Letters Patents of the ſame King made unto him during the firſt eſtate, but 19 *H.*6.20. in Treſpaſſe for taking away of his ſheaves of corn, The Defendant ſaid that he was Parſon, and took them as Tithes, and that the Plaintiff claiming as Parſon, whereas he was never inſtituted nor inducted &c. and it was holden no good colour, becauſe he did not give any colour to him, but as an uſurper.

But 11 *H.*4.84. It is a colour to ſay, that the Plaintiff entred claiming as heire, whereas he was a Baſtard by *Paſton*. But by *Pigot*, 38 *H.* 6.7. It is no colour to ſay, that the Plaintiff entred as heire where he is a tranſgreſſour; no more is it to ſay, that he was a Baſtard as before, if he do not ſay, that he is Baſtard, *Higne*.

Alſo in 2 *Aſſ.*7. It is ſaid, that it is a good Colour; that Plaintiff entred claiming to *J.* his father, who was brother of the Defendant, but *J.* was a Baſtard, but to ſay the Plaintiff did enter as Heir of *J.* who was a Baſtard, generality is no Plea, for he doth not admit any privity betwixt him and the ſaid *J.*

Note alſo that Colour in Treſpaſſe is tolerable, if it be any matter which doth pretend a difficulty to the Lay people, *C.*10. *per* Doctor *Leyfields* Caſe, otherwiſe the Defendant ought to plead the generall iſſue, and therefore it is a good Colour, that *J N.* granted to him the Rendition, and the Tenant for terme of life died, and that he entred by force of that grant where the Tenant never atturned, for the Lay people do not know whether the Rendition do paſſe without atturnment or not.

So,

So if the Tenant ſaith, that he leaſed for life, and the Plaintiff did ſurrender, for it is a doubt if it may be without Deed. So that the Father of the plaintiff did leaſe for life, and afterwards that he did releaſe unto him, and that the Plaintiff ſuppoſing him to have died ſeiſed, entered, for it is a doubt to the Lay people, if by this Releaſe the Fee doth paſſe. So if the Defendant ſaith, that the Father of the Plaintiff did enfeoff him, and that afterwards he doth ſuffer him to occupy the Land, and that the Plaintiff ſuppoſing that he died ſeiſed did enter; but if the Defendant ſaith, that he was ſeiſed untill by the Plaintiff diſſeiſed, upon whom he entred, it is no good plea, nor colour, ſo that the plaintiff was younger ſon, where he entered as heire, or that the Defendant leaſed unto the father of the plaintiff for life, and the plaintiff ſuppoſing that he died ſeiſed in fee entred, for theſe caſes are not alwayes dubious to the Lay people, 19 H.6.21. where the caſe is notably argued.

Alſo in 24 *E.*3.50. It is a good colour, that a woman was ſeiſed and took a husband, and had iſſue *T.* and that the Husband and wife died, *T.* died without iſſue, and that the Tenant did enter, and that the plaintiff as heire of the part of the father, did enter where the land came on the part of the Mother, becauſe that is a doubt to the Lay people to whom the land ſhould deſcend.

8 *Eliz. Dyer* 246. In an Aſſiſe of Land in *Middleſex*, the defendant pleaded a Leaſe for years made unto him by one *F.* H. the name *de Meſſuagio* in *Surrey, & omn. terrarum nuper cum eo dimiſſium*, and added the ſame to be the Land in the plaint, and ſo he was in without wrong, and the plaintiff did demur, becauſe there was no colour given to the plaintiff by *F.* and it was here a *Quare* if he needed any colour, but the better opinion of the court was, that the better form of pleading had been, that *F.* was ſeiſed *tam de terris quam* of the houſe, and demiſed *&c. per nomen &c.* 29. See *C.*10. *part* Doctor *Leyfields Caſe.*

III. *Where Colour ſhall be good by an eſtate determined, and defeated, and where not.*

IN an Aſſiſe, the Tenant ſaid, that *I. N.* did leaſe the Land for life unto the father of the plaintiff, the remainder to the Tenant, & the father died, and that the Tenant entred, and the plaintiff ſuppoſing his father died ſeiſed in Fee entred; and it was holden a good colour, 9 H.4.3.

Alſo in a Writ of Entrie in the *quibus*, the Tenant ſaid, that *B.* did recover the Mannor of *I.* againſt *C.* whereof the Land in demand is parcell, whoſe eſtate of *B.* the Tenant had, and that the plaintiff claiming by a Deed made by the ſaid *C.* did enter, & it was holden good colour.

So to ſay that the Tenant was ſeiſed, until by *I.S.* diſſeiſed, & the plaintif claiming by a deed made by *I.S.* entred upon whom the Defendant did reenter, and yet the eſtate of him by whom he claimed his eſtate was defeated, 9 18. by the whole Court.

Alſo

Alſo if the Defendant ſaith, that he gave the Land upon condition, or delivered the goods upon Condition. So in Treſpaſſe, it is a good plea, that he bailed the goods in pledge, and that he had redeemed them: So of Bailment of goods to manure his Lands, and the reaſon is becauſe that the party had a good intereſt, untill he entred or ſeiſed the Lands and goods, and all this is agreed, in 5 *H.*7.18.

Alſo if the Defendant plead that the King gave the Lands to him in tail, and that he let them to the plaintiff at will and entred, it is a good Colour *per Curiam*, 18 *E* 4.10.

So that the King leaſed to the plaintiff at will, and that afterwards he gave the Lands to him by his Letters Patents in Tail, 18 *E* 4.15. But by *Littleton* here, if the Defendant ſaith, that *I.S* was ſeiſed, and enfeoffed him, and after Entry that he enfeoffed the plaintiff upon whom he did re-enter, the ſame is no good Colour, for it appeareth by my plea, that his eſtate was deſtroyed, *ad quod non fuit reſponſum.*

Alſo in a writ of Entry upon diſſeiſin of a rent unto the Predeceſſor of the plaintif, the Defendant ſaid, that *I.N.* was ſeiſed of the ſaid rent in fee, and granted the ſame unto the Predeceſſor of the plaintif, and after *I.N.* died, the Predeceſſor died, and the Tenant as ſon and heir entred, and it was holden a good Colour by all the Juſtices but *Bryan*, in 19 E.4.3. but the opinion of *Brook* in abridging of the caſe is, that ſuch a Colour by an eſtate determined, is not good, becauſe no doubt there can be of it to the people.

In 38 *E.*3. 18. It is holden a good Colour, that the plaintif entred into the Land of the Defendant, and ſowed it with corn, and the Defendant entred, and ſo is the Book of 12.*H.*7.25.

3 *H.*6.9 In Treſpaſſe the Defendant ſaid, that the Predeceſſor of the plaintif leaſed at will, and afterwards reſigned, and holden good by colour, by *Strange* and *Martin*.

Alſo in 38 *H* 6,7. It is ſaid, that in Treſpaſſe, that *I.S.* abated, and endowed the wife of him that died, and the plaintif claiming by *I.S.&c.* no colour, becauſe the eſtate of the abettor is gone by the endowment.

2 *E.*4.17. In a Writ of Entry, in the nature of an Aſſiſe, the Tenant ſaid, that his father was ſeiſed in Fee, and leaſed unto *N.* for life, N. died, and the leſſor did enter as in his reverſion, & died ſeiſed, and the Tenant is here entred, and the demandant claiming by a Deed by N. entred, and holden no colour, for by the death of Tenant for life his eſtate was determined. So to give colour by a diſſeiſor and to confeſſe an entry upon him, or by a Feoffee upon condition, and confeſs an Entry upon him, is no colour, becauſe it appeareth that their eſtates are avoided by entry, *quære* if there be any difference betwixt this caſe and the caſe put before, *M.* 5 H.7.18.

Note, that in time H.8. it is put for a rule that colour ſhall not be given by a poſſeſſion defeated, contrary of an eſtate defeated.

In treſpaſſe, the Defendant gave colour, by a gift of the Teſtator, where he did not give, and no colour, 19 H.6.12. *contra* by a Feofment where nothing paſſeth, for the Feofment is admitted, 18 E.4.9. 38 H.

38 H.6.5. Colour was this, that *J. S.* was ſeiſed, to whom *J. D.* did releaſe, and gave colour by *J. D.* and not good.

IV. *By what perſons Colour ſhall be given, and by what not, and to which perſons not.*

COlour ſhall not be given by ones ſelf in the conveyance, but by him by whom he doth Commence his Title, 22 *Ed.*4.24.10 H.7.14. for if it ſhould be otherwiſe, then the firſt part of the Conveyance ſhould be out of the Book, but againſt that is the book in 21 H.6.32. for here it is ſaid, that he may give Colour by the one or the other, and *L.* 5. *E.* 4. 134. *acc.* 15. *E.*4.31. of which *Brook* makes a doubt.

Alſo Colour ſhall be alwayes given to the Plaintiff, and not to the Defendant, alſo if the Defendant ſaith that *J. S.* was ſeiſed, and that *J. D.* claiming by a feoffment of the ſaid *I. S.* where nothing paſſed, entered and enfeoffed the Plaintiff, and in that caſe becauſe the Colour was given to a ſtranger, it was ſaid, 33 H.6.7. *Petit. Br.* 115. *acc.*

Alſo Seiſin in fact or in Law ſhall be alledged in him by whom Colour is given, 2 *E.*4,5. 34 H. 6.1. Alſo ſee 15 *E.* 4.31. where the Defendant gave Colour by himſelf, and it was good.

V. *Where Colour for the Moity ſhall be ſufficient for the whole.*

IN 19 H.6.46. in Treſpaſſe the Defendant ſaid, that *I. S.* was ſeiſed and had iſſue two daughters and died, and conveyed the Land to himſelf, and gave Colour by one of the Daughters and good, alſo here 19 H.6. 49. in Treſpaſſe, the Defendant ſaid, that *I. S.* was ſeiſed, and enfeoffed Husband and Wife, and gave colour by the Husband and good, the ſame Law, 33 H. 6, 7. by *Priſot* in a generall Action of Treſpaſſe, but *contra* in Treſpaſſe upon the Statute of 5 H 2. for the Writ doth comprehend how he entred into the whole, and therefore he ought to anſwer it.

Firſt, it is to be noted, that alwayes colour ſhall be given upon a Plea in Barre, for if he plead to the Writ, there needs no colour, as appeareth by 21 H.4.4. the ſame Law where the Defendant prayeth in aid, 10 H. 7.10. See *C.*10 *part Leyfields* caſe, and there it was where the King was prayed in aid of, and ſo in lieu of Voucher, which is in nature of a Bar.

Alſo where the Defendant binds the Title of a Plaintiff by a feoffment with Warranty, there needs no colour, the ſame Law of a Releaſe, Fine, Corodie, Diſſeiſin, and Re-entrie, *Pet. Br.* 115. 37 H.6. *b. acc.*

Alſo if the matter be matter in law, there needs not any colour, 36. H.6.7.

He

He who juſtifieth for Tythes as Parſon, needeth not give colour, *Per Brian*, 21 *E.*4. 18.

He who juſtifieth as ſervant, and he who conveyeth title from the plaintiff, needeth not give colour; contrary if he convey title by a ſtranger, *C.*10 *part*, *Leyfields caſe*, 18 *E.*4.13. 2 *E* 4.8.13 *H.*7.12.

Alſo if the party claim property, he needeth not give colour, as where he juſtifieth damage feaſance, by *Catesby* and *Brian*, 12 *E.*4 12.

See the opinion of *Brian*, 21 *E.*4.18. *and* 65. That if a man juſtifieth for tythes, or Wreck, or Waife, or for any matter of Record, that the Defendant needeth not give colour, *Quære* by *Brook*, and the book of 12 *E.*4.6. ſeems to agree it, for there it is ſaid, that if the Defendant ſayth that the goods were ſtollne, *Per quoſdam ignotos*, there needeth no colour, but if he ſaith, that *J:S.* was poſſeſſed of the goods as of his own goods, although that *B.* ſtole them, there he ought to give colour, for he doth not admit any property in the Plaintiff, the ſame Law if he ſaith, that the goods were ſold in market overt, he ſhall not give colour, but if he ſaith, that *J.S.* ſold them to him, he ought to give colour, 5 *E.* 3. *acc.* But 14 *H.*6,2. He ought to give colour in caſe of Waife, but the Reporter is contrary to the book, becauſe he admitted a property before the ſtealing of them.

9 *E.*4.22. Colour given by him who juſtified for Wreck, and 34 *H.* 6. 10. *acc. idei Quære.*

Alſo if a man plead that it is his free-hold generally, he ſhall not give colour, 32 *H.*6. 12 *E.*4.5. 6 *H.*7.14. contrary of a feoffment, or if he convey the freehold ſpecially by a ſtranger, for then he doth not admit any intereſt in the plaintiff, as the caſe is in 12 *E:*4:6: and that appears alſo by 2 *E:*4:8.

COLLUSION, AND COVIN.

I. *What Feoffments ſhall be within the compaſs of the Statute of* Marlebridge, Chap. 6. *what not.*

See 6. part 76. acc. Com. 82 ac.

THE Stat is, *De his Qui primo genitos feofare ſolent, &c:* yet if the eldeſt ſon dyeth, and he enfeoffeth the youngeſt, the ſame is within the equity of the Statute, *Plow. Com.* 59.

If Lord and Tenant be, and the Tenant alieneth in fee by colluſion, the feoffee doth re-infeoff the feoffor for life, therein in taile to the ſon, Leſſee for life dyeth, the heir entreth, a ſtranger by licenſe of the heir puts in his cattell, the Lord doth diſtrain them damage for a year, the ſtranger brings a Replevin, and recovers; becauſe it was not averred that the re-infeoffment was by Covin, as well as the firſt feoffment, but if he had averred it, then the heir ſhould be in ward, notwithſtanding the particular eſtate for life; but by *Moyle*, If the Tenant leaſeth for life to a ſtranger, the Remainder in fee to the ſon, the ſame is not within the Statute, becauſe the ſtranger might live longer then the ſon, 33 *H* 6.14. Alſo for another reaſon, becauſe that Colluſion was not in all the Eſtates, and therefore if a man maketh a feoffment by colluſion, and the feoffee maketh a feoffment over, *Bona fide*, the colluſion ſhall ceaſe: Alſo if the Tenant alieneth to a ſtranger in taile, the remainder in fee to his ſon, and afterwards Tenant in Taile alieneth to his Son, the ſame is no Colluſion, by *Moyle*: Alſo if a Feoffment be made unto a ſtranger, to the intent to marry his Daughters, and afterwards to re-infeoff his ſon, the ſame is no colluſion with the ſtatute, but contrary if it be to re-infeoff his Heir immediatly. Alſo if ſuch a feoffment be made to enfeoff the Heir and a ſtranger, and to the heirs of the ſon, the ſame is no colluſion, by reaſon of the benefit which may be to the

Vi. C. 4. part 14 in Vernons caſe untill the ſtatute of 4 H. 7. the heir of ceſtui que uſe ſhould not be in ward, yet ſee 27 H. 8. 9. where it is adjudged, that if ceſtui que uſe after the Statute of 4 H. 7. had made a feoffment by colluſion to defraud the Lord of his ward; the ſame is taken to be within the Statute of Marlebridge cap. 6.

the ſtranger: Alſo it is there admitted, that if the father giveth lands in taile to the ſon, that the ſame is within the ſtatute, but ſee 27 H: 8: 10: contrary.

A man maketh a feoffment to two, having iſſue 2 ſons, one of the age of 2. years, the other of the age of one year, and made his will, that his Feoffees ſhould have the free-hold for twenty years, and then his ſon, to enfeof his ſons if of ful age, and it was holden to be colluſion, notwithſtanding that the eldeſt ſon was of the two years at the time of the feoffment, 6 *R.*2 *colluſion* 47:

The Tenant enfeoffeth a ſtranger, to the intent to enfeoff his ſon when he cometh to the age of one and twenty years, the ſame is not colluſion, becauſe the Father may live untill he cometh of full age, alſo the feoffee hath an intereſt for the time, if the Father dyeth before the ſons age of one and twenty years, but if the feoffment had been to re-infeoff the ſon after the death of his father, the ſame had been colluſion. 10 *E.* 4. 2.

Vi C Litt. 7. *If the Father had made an eſtate for life, or a gift in taile, the remainder to another in fee, the ſame was out of the Statute of* Marlebridge, *But now at this day the ſon ſhall be in ward, for a third part of the land and his body, the ſame law, if he enfeoffed his eldeſt ſon, and a ſtranger, and to the heirs of the ſon, he ſhall be in ward for his body, and the third part of the land.*

It is cleer that the ſame cannot be colluſion during the life of the father. 33 H. 6: By *Priſot*, If a man maketh a feoffment and livery upon condition that the feoffee re-infeoff his heir, when he cometh of full age, although that the deed of feoffment be ſimple, yet it is a feoffment by colluſion, 49 *E*: 3: 20: *acc:*

Vi: 6: *p*: Sir *George Curſons* caſe, and *vi*: *C*: 8: *p*: 83. in *Leonard Tovies* caſe, if the Father doth enfeoff his younger ſon, or other to make a joynture to his wife, or for the advancement of his daughter, or for the payment of his debts, and afterwards he conveyeth his land to his eldeſt ſon and dyeth, his heir within age, he ſhall be in ward for his body, and for the third part of the land, and that by the Statute of 32 and 34 H: 8: But if the eldeſt ſon; *bona fide*, purchaſeth land of his father for valuable conſideration, he ſhall not be in ward, nor pay prime ſeiſin: 14 *Eliz: Dyer*, *C.* 2: *p.* in *Binghams* caſe, if the father convey his lands to his middle ſon in taile, and the remainder to the youngeſt ſon in fee, and dyeth, his eldeſt ſon within age, he ſhall not be in ward by the ſtatute of 32 *and* 34 H: 8: for that it is out of the Statute, the 20 *Eliz: Dyer*, 361: If the Kings Tenant doth enfeoff his brother, to the intent to infeoff his heir male of full age, where at the time he had not heir male, and the father dyeth, and then an Heir male is born, if this colluſion be found by office, the Heir ſhal be in ward for a third part of the land:

Vi: 10 *Eliz: Dyer* 268 *C*: 1: *part*, 47: where it ſeemes he ſhall be in ward for the whole, by the fift by colluſion, *vi*: *C*: *Lit*: 78: but for a third part:

If the Tenant levieth a fine *ſur* releaſe, the Lord may aver the ſame

to be by Colluſion, 7 *H.*4.15. 12 *H.*4.16. where a Fine was pleaded, the Lord did award the ſame to be by Colluſion, to the intent to enfeoff his heir at full age, but ſee 38 *E.*3. *Br. Gards* 74. that againſt a Fine *Sur Conuſans de droit come ceo*, no Colluſion ſhall be awarded, becauſe the Fine is executed, the doubt that a Fine ſhould not be within the Stat. was, becauſe the Statute is, *De his qui primo genitos feofare ſolent*, yet a Fine is a Feoffment upon Record, and therefore holden to be within the Statute.

A Deviſe is not within the Compaſſe of this Statute, as appeareth by the better opinion of the Book in 27 *H.* 8.7. the Lord *Dacres* caſe, for it ſhall not be intended, that he made the Deviſe by Covin.

If a Feoffment be made rendring a ſmall Rent, during the term that his heir ſhall be within age, and afterwards the double of the Rent, the ſame is Colluſion awardable, *See Old N.B.* 96.

What Lords are within the proviſion of the Statute of Marlbridge, cap. 6.

IF the Kings Tenant holdeth other Land of another perſon by Knights ſervice, and alieneth the ſame by Colluſion to enfeoff his Son and heir apparent at his full age, and dieth, the heir within age, and Ward of the King, by reaſon of other Land holden *in Capite*, the King cannot award the Colluſion, for that is given to him who is immediate Lord, by *Hull* & *Gaſcoign*, 9 *H.*4.6 but afterwards *Hull* ſaid, that he would be adviſed of it: But clearly by *Tirwitt*, if a man who holdeth of the heir in ward maketh a Feoffment by Colluſion and dieth, the Lord may award the Colluſion, for now for the time he holdeth immediately of the Lord; yet *Fitz.* to Colluſion 12. by *Thirning* and *Hanckford contr.* as to the firſt caſe, for the Prerogative doth extend for to award the Colluſion of the Land aliened, as to have the Land not aliened, *Quære.* For *Brook* makes a doubt by what Law the King may award the Colluſion, *Nota* 12. *H.*7.19. *Marrous.* It is admitted, that he may take benefit of the Statute, but he ſhall be put to his *Scire facias*; but *quære* alſo of that, for if it were apparent Colluſion, he ſhall have the ſame benefit which other Lords ſhall have, and ſee here in the end of the Caſe, that *Frowick* vouched the Book of 9 *H.*4. to be adjudged, that the King is not within the compaſſe of the Statute in this Caſe, but the reporter ſaith, that the Book is againſt it, 12 *H.*7.8.

But if the covin had been at the common law, it ſeems the Lord might award it wel enough, for he who hath wrong may award it to ſave his right and therefore if Tenant in Tail doth diſcontinue, and afterwards nine dayes before his death he enfeoffeth his Son of other Land which ſhould

be aſſets to him, to the intent to extort the warranty, the Diſcontinuee may avvard that covin; 34 *E.* 1. *Garranty* 88.

The Feoffee upon condition, becauſe he had broken the condition, did cauſe a ſtranger to bring a Formedon againſt him, to the intent to bind the Feoffor, the Feoffor may award that colluſion, and yet he is a ſtranger to the action, 7 *H.*4.19. alſo a Termor ſhall award covin, 14 *H.*8.3. and the Action was brought againſt the Leſſor, *C.* 2 *part* 55 *acc.*

When the Lords may enter, when not, but are put to their action.

IF the Father enfeoffeth the Son and heir by colluſion, and dieth, the Son within age, the Lord may enter and ſeiſe the Ward, for the ſame is colluſion apparent, and is not within the meaning of the Statute of *Marlbridge cap.*6. But if the father enfeoffeth a ſtranger to enfeoff his heir, the Lord cannot enter, but he is put to his Writ of Ward: the ſame Law where the Feoffees make a Feoffment over he cannot enter upon the ſecond Feoffees, but if the heir himſelf be one of the ſecond Feoffees, and it is awarded, that theſecond feoffment was by covin as well as the firſt, the Lord may enter upon the heir, who is in by the Feofment of his Father, or the Feofment of his Feoffees, and here the covin ſhall be tried, but where he cannot enter, then the covin ſhall be tried by an action brought by him, for the ſame is not covin apparent but awardable, *See* 33 *H.*6.14. where the caſe is notably argued.

Betwixt what perſons Colluſion ſhall be inquired of by the Statute of Weſt. 2.cap.36.*of Mortmain.*

THE Statute of *Weſt.* 2.*cap.*36.is, *Cui viri Religioſi & aliæ perſonæ Eccleſiaſticæ implacite at aliquem &c. & ſic implacitatus fecerit defaltam.* The Statute is not to be intended where a ſpirituall perſon impleads a Lay man, but it is alſo to be conſtrued where one ſpirituall perſon impleads another ſpirituall perſon, for Colluſion is the cauſe of the making of the Statute, which covin is prohibited in all perſons, and that the Law is ſo, ſee 8 E.3,*&* *Old* N.B.177. for here the caſe was, that an Aſsiſe of *Darrein preſentment* was brought, and the Plaintiff was non ſuit, for which a *Quale jus* iſſued, and there the ſuit was betwixt two ſpirituall perſons, and the opinion of *Br.* in abridging the caſe is, that one Religious perſon connot alien to another Religious perſon, and to that purpoſe ſee *F.* N.B. in his N.B.222. *D.* where he puts the caſe, that if an Abbot will give Lands or demeans in Mortmain to another Abbot or Prior, or other Body politique, yet he ought to have the Licence of the King ſo to do, by reaſon of the words of the Statute of Mortmain, *Weſt.*2.*cap.*36.

In

In what Caſe Quale Jus *ſhall iſſue forth, in what not.*

IN a Writ of Entry *ſine aſſenſu capituli*, the Tenant pleaded in barr, and traverſed the Entry, and it was found for the Demandant, but the Colluſion was not enquired of, for which cauſe the Court awarded a ſpeciall writ for to inquire of the Colluſion; for that a *Quale Jus* ſhall not iſſue forth but upon a default; for where the party doth recover by iſſue tryed, the Jury ought to inquire further of the Colluſion, and to that it ſhall be in the nature of an inqueſt of Office; for an attaint lyeth upon it, 33 H. 6. 25. 14 *Aſſ.* 13. 44. E. 3. 41.

40 E. 3. 37. in Waſt, the Writ was brought by an Abbot, the Sheriff returned upon a Writ of Enquiry of the Waſt, the Waſt and the damages 20 marks but the Colluſion was not inquired of, for which cauſe a *Quale Jus* iſſued forth, but otherwiſe it ſhould have been, if the triall had been before the Judges, for then thoſe who tried the iſſue, ſhould alſo have enquired of the Colluſion, as the book in 38 *E.* 3. 12. is.

14. *Aſſiſe* 13. *Br. Quale Jus* 11. In an Aſſiſe the Defendant made default, and it is there holden, that the Aſſiſe ought to enquire of the Colluſion, and no *Quale Jus* ſhall iſſue forth, for the Jury are preſent at the Bar, contrary in Waſt *Quod nota.*

50 *E.* 3. 22. In a *Ceſſavit* by an Abbot, the Tenant did appear and confeſſed the Tenure, and tendred the arrearages, and before the party had Execution, a *Quale Jus* was awarded upon the confeſſion.

45 E. 3. 18. In a *Præcipe quod reddat*, the Tenant vouched an Abbot, the Abbot vouched over one who made default, for which the Tenant had a Writ of Enquiry againſt the Abbot, and the Abbot over, but Execution did ceaſe untill a *Quale Jus* iſſued forth to enquire of the Colluſion, becauſe that the vouchee made default, but if the Recovery had been by action tried then the Colluſion ſhould not be enquired of, becauſe it is out of the Statute.

A man brings an Aſſiſe, the Tenant plead, no wrong, no diſſeiſin, which is found for the Demandant, yet the colluſion ſhall be enquired of, but not by a *Quale Jus*, and yet the Statute is. that the colluſion ſhall be onely enquired of upon default made, 20 *Aſſ.* 14. alſo 3 E. 4. 13. By *Jenny*, if a Religious man doth recover by confeſsion, rendition, or action tried, the colluſion ſhall be enquired of.

In a *Ceſſavit*, a *Quale Jus* iſſued forth, and it was found that there was no colluſion, and for fear of Mortmain, it was found that his Title was by ſucceſsion, 21 E. 4, 5. & 19 E. 4. 5. and yet the Judgement ſhall be of the Land and not of the Seigniory, *quod nota.*

In what actions Colluſion and Covin ſhall be enquired of, and in what not.

IN all reall actions where any free-hold ſhall be recovered, colluſion ought to be enquired of, as *Ingreſſu ſine aſſenſu capitali*, 23 H. 6:25: In a *Ceſſavit*, 50 *E.* 3. 12. *in Aſſiſe*, in every *Precipe*, 14. *Aſſ.* 16. So in waſt eſpecially grounded againſt Leſſee for life, the colluſion ſhall be enquired of, but contrary againſt Leſſee for years, 3 *Edw.* 4. 14. 10 H. 7. 3 but for the damages judgment ſhall be given preſently, 40 *Edw.* 3. 37. In a *Juris utrum*, where the iſſue is upon the right, no colluſion ſhall be enquired of, 37 *Edw.* 3. *Colluſion* 15. In a replevin, in a writ of right of Ward, *Ejectione firme*; *Quare ejecit infra terminum*, *Warrantia charta*, In Covenant to levy a fine where an Abbot is vouched, Colluſion ſhall be enquired: So 19 *Edw.* 3. Upon execution by *Elegit*, 14 *Edw.* 3. upon a writ of enquiry of damages, colluſion ſhall be enquired of, and Execution ſhall ceaſe, as well for the damages as for the Land, for if the colluſion be found, he ſhall not have damages, *Quare* if the ſame Law be in a writ of Waſt: Alſo in a *Quare impedit*, the Colluſion ſhall be enquired of, becauſe it is not in the nature of a Treſpaſſe; but it is to recover the Church, and therefore the Colluſion ſhall be enquired of, 42 *E* 3. 27. but contrary in an annuity, for that chargeth only the perſon, 16 *Edw.* 3. 10 *Edw.* 4. 6. 34 H. 6. 37. 20 H. 6. 7. 6. *E.* 3 21.

10 H. 7. 3. In Avowry no colluſion ſhall be enquired of, becauſe he recovers nothing, but to have a return: alſo in a Writ of entry, *Ad communem legem*, there ſhall be no enquiry of Colluſion, becauſe it lyeth only where Tenant by the curteſie, or Tenant in dower do alien in fee, and here he is to recover nothing, but to preſerve his Eſtate of the Reverſion, But ſee before that in a Writ of Entry, *Ad terminum qui præteriit*, the Colluſion ſhall be enquited of, and ſo in a *Conſimili caſu*.

Where the Colluſions ſhall be tryed.

IF a *Precipe* be brought by an Abbot, and a forraine releaſe is pleaded, and it is found for the Abbot, thoſe of the forren County ſhall not try the colluſion, but it ſhall be tryed where the land is, 33 H. 6:25.

In waſt brought, the Defendant pleaded a licenſe in *London* of Land in *Eſſex*, and the licenſe tryed and found for the Plaintiff, and he did enquire of the colluſion in *London*, and by *Mortdanceſter* the colluſion ſhall be tryed where the land is in *Eſſex*, becauſe they have the beſt connuſans of it, for the Colluſion goes to the whole matter, and it is not like unto Treſpaſſe, where a Releaſe is pleaded in a Forraigne County,

for

for here they ſhall enquire of the damages, becauſe it is but acceſſory, and he vouched 11 *H.*4. to agree error, but *Frowick* held that the colluſion might be enquired of in any of the places, and eſpecially in this caſe of Waſt, where the enquiry lieth much in the diſcretion of the fathers, and it is in the perſonalty, 10 *G.*7.3.

CONDITIONS.

I. *Conditions where they ſhall be void.*

HE whoſe cattel were taken in *Withernam*, took them from the Sheriffe, and gave Bond to keep the Sheriffe without damage; and the Bond was holden void by *Marcham* and *Rikhill*, becauſe it was againſt Law, as an Obligation to keep the Sheriffe harmleſſe of their embezelling of a Writ, and *Thirn* ſaid, That if I am bounden to ſave you harmleſſe againſt all the world, it is void, becauſe the condition is impoſſible, *M.*2.*H.*4.10. *Obligation* 13. *vide* 8.*E.*4.12. *Obligation* 8. agrees to the laſt caſe, that the whole is void, when the condition is impoſſible, but the contrary is holden, 2 *E.*4.3 by *Choke* and *Needham*.

One who rendred himſelf at the Exigent, bound himſelf to keep the Sheriff without dammage of the Return, and he returned *languidus in Priſona*; and a new Sheriffe being made, the old was diſtrained to bring in the body, and loſt iſſues, by the opinion of the Court, the obligation was forfeited, although he did not looſe directly upon the ſame Return, but upon the ſequel, and by reaſon thereof, *M.*8.18 *E.*4.21. and the Plaintiff needs not to give the Obligor notice of the damages, 8 *E.*4.12.

Debt upon an Oblgation conditioned, if the plaintiff be not endampnified againſt the Biſhop of *F.* of a collation by him whereof he was not charged, and diſtrained for the ſame *&c.* The Defendant did alledge that he made agreement vvith the Biſhop, and alſo that he gave to the Plaintiff 100 s. for the Diſtreſſe, and the laſt vvas holden a ſufficient ſatisfaction to ſave the Obligation, *T.* 41 E.3. Dett. 128.

See that a condition to keep the Obligee harmleſſe againſt a ſtranger to vvhom he is bound, ſeems to be void, becauſe the ſtranger hath not to meddle &c. 21 E.4.63.

A condition to keep him vvithout Damage in any action brought againſt

gainſt him, is againſt law, becauſe it is maintenance, and the whole is void 11 *E.*4.28.

A generall condition to keep without damage, without any more, is void, *vi.*9.*H.*4. *conditions* 6. 2 H.4.10. 8 *E.*4.13.

II. *Where a Condition is repugnant to the Eſtate, or grant, or war-anty made but in part, is good, where not.*

IT was holden by all the Juſtices, but *June*; That the condition in a warranty by *Proviſo*, that he ſhall not vouch, or that he ſhall not recover in value is good, becauſe it doth not take away the whole grant, for he may rebutt; but in a feoffment the proviſo, that the feoffee ſhall not take the profits, nor ſhall commit waſt, nor alien is void; but the laſt is a good condition upon a gift in tail, 7 *H.*6.4.7. *condition* 1. 21 *H.*6. *condition* 4. In the firſt caſe *June* would have it to be a good defeaſance of the warranty, but not by the ſame deed of the laſt caſe, *vi.* 13 H.7.23. But a condition, that the Feoffee ſhall not alien to *C.* or to *T.* or that he ſhall not alien by deed, is good, contrary of fine, 10 H.7.11.

*P.*18. Car. *Co.* 1.*B.* in *Barrow* and *Woods caſe* *Debt, the condition of a bond was, that the defendant ſhould not keep a Mercers ſhop in F. and if he did, that he ſhould pay* 40 *l. to the plaintiff, although that the condition did not reſtrain the party, totally of his trade, yet it was adjudged a void bond, vi.*21*H.*45. *c.*11. *part* 53. *and ſo was adjudged, p.*44. *Eliz: in the common pleas, Rott in Peget and Batchelors caſe, quære if there be not a difference betwixt a promiſe and an obligation, for a man may promiſe or contract that he will not uſe his trade, but he cannot bind himſelf not to do it.*

C.Lit. 223. *A deviſe to one in fee upon condition he ſhall not alien void, ſo of a releaſe or confirmation.*

But the feoffee may covenant that he will not alien, and good, 13 *H.*7.13. 50. 43. *& ß.*44. *the feoffee may covenant that he will not vouch or rebut,* *C.*6. *part* 41. *acc. in Midmayes caſe.*

If land be given in taile, the remainder in fee to the heirs of the donee, upon condition to re-enter upon alienation of the Tenant in taile, this is good, which were not good if the fee be executed, 11 H.7.6.

A Rent was granted in fee, *proviſo*, that the wife of the grantee ſhall not be endowed, it is a void condition, becauſe it is for the advantage of a ſtranger, or becauſe it is repugnant, but a *Proviſo*, That ſhee ſhall not be endowed during the nonage of the heir, is a good condition, and ſhe ſhall recover; but execution ſhall ſtay, *&c.* 22 *E.*3. *Condition* 12. 12 *E* 3. *Condition* 11. But ſee, That if that Land be aliened over in fee, and the Tenant doth attorne, hee ſhall be eſtopped to claime this advantage.

Two grant *cuſtodiam parci*, taking ſuch fees as *T.* had, *Proviſo*, that that deed ſhall not charge the perſon of one of the grantors, the ſame is a void condition, 10 *H.*7.8.

III. *Condition to keep without Damage, or to warrant & defend Land, how it ſhall be performed againſt a perſon certain, &c.*

NOte, If I be bounden to any one to warrant and defend his Land againſt all people, if he be put out of his Land by any man, the obligation is forfeited by reaſon of this word (*Defend*) *M.*2 *E.*4.16. Otherwiſe it ſeems of the word (*Warrant*) *Quære Debt* 71. See 18 *E.*4. 20. A difference where the Condition is, That *B.* will give him licenſe, and where he ſhall have licenſe, or in the laſt caſe, if he be diſturbed by any, the Obligation is forfeited by *Littleton.*

Condition to keep the Obligee without damage againſt *J.* to whom he was bounden, *&c.* it ſhall be a good bar, that before the day, the ſayd *J.* did deliver the Obligation to the Plaintiff, without that, that he was damnified before the delivery 38 *H.*6.23. *Debt* 65.1

IV. *Condition or Covenant to be performed beyond the Sea.*

THe Condition of a Bond which is to be performed beyond the ſea, is voyd for the tryall, *Per curiam*, 10 *H.*6. *condition* 2.

A Condition to go with the obligee beyond the ſea in warr is good, and if he depart beyond the ſea, that ſhall be tryed by the Marſhall, So a Condition, that ſuch a ſhip ſhall come from ſuch a port at ſuch a day is good, but a condition that ſuch a ſhip ſhall come *Preſenti viagio* from *Burdeaux* to *Lynn*, is not good, but the Obligation remaines ſingle, becauſe the manner of the voyage cannot be tried.

21 *E.*4.20. *Debt*, 98. See the book, and a covenant upon ſuch a deed is good, if the other will plead not his deed, otherwiſe it is if he plead performance, or challenge the deed, 21 *E.*4.12.

V. *Conditions of feoffment, Leaſe, or Gift, That if he alien, it ſhall remain to a ſtranger, &c. or if the feoffee do not pay.*

A Gift in tail to the eldeſt ſon upon condition, that if he alien that the ſame ſhall remain to the youngeſt, adjudged a void condition, 21 *H.* 6.33.

So if the condition were, that upon ſuch alienation the eſtate to ceaſe

or

or that he in the remainder ſhall enter, the remainder is void, 21 *H.*7.12 for it is there ſayd, That the fee cannot ceaſe without an entry, but an eſtate for life may. As if Leſſee upon ſuch a condition alien after Attornment to the grantee of the reverſion, he may enter, 11 *H.*7.17. But otherwiſe is it of a condition. that he may enter. *Quare*, the difference, for an eſtate of free-hold ſhall not ceaſe by the death of *Ceſtui que vie*, until he in the reverſion hath entred in fact, 18 *E.*4.*acc.*

See C. 3 *part in Pennants caſe, That an Eſtate for life, cannot determine nor ceaſe without an entry.*

Triſilian ſaith, That if I give Lands in fee, rendring rent, and for non-payment, that the eſtate of the feoffee ſhall ceaſe, and the land ſhall remain to a ſtranger, the ſame is good, and upon the ceaſer, the ſtranger ſhall have a Formedon in remainder. *Wich.* ſuch a caſe never happened, therefore full adviſe of it, whether it be law or not, *&c.* 43 *Aſſ. pl.* 44 *condition* 28.

A gift in taile upon condition, that the donee, *&c.* may alien for the advantage of his iſſues, is good, 46 *E.*3.*Warranty* 28.

46 *E.*3.8. 8 *H.* 6.24.*acc.*

A deviſe for life upon condition, that the deviſee ſhall ſigne for the ſoul of the dead, the remainder over in fee, if the heir enter for the condition broken, he ſhall defeat the remainder, 24 *Aſſ. pl.* 17. *Aſſiſe* 281.

See more of this, *Perkins*, *fol.* 108.

VI. *What words ſhall make a Condition in the Kings Grant, or in the grant of a common perſon, and when they ſhall be in the Nature of a Covenant, Condition, or Grant.*

THe King granted an Advowſon to a Biſhop, and that he might give it in Mortmain, it is no condition, but it is an election in him to give it in Mortmain, 43 *E.*3.34. *conditions* 7.

Note Plow. Com. 33. *and* 34. *for a rule, That no words are condition if they be not reſtrict, for if they do not reſtrain, they are rather words of limitation, then of a condition, and therefore Com.* 139. *in Browning and Beſtus caſe, If lands*

If a man maketh a Feoffment, and that the feoffee may pay the Rent, and for non-payment, that it ſhall be lawfull for the feoffor and his heirs to enter, it is a voyd condition, for he need not pay it, *Perkins* 144.

Debt by *E.* againſt *P.* upon an obligation which was endorced, *cum infra nominatus* P. *tenetur infra ſcripto E: præfat. tamen* E. *vult & concedit, quod ſi dictus*, P. *ſteterit ad arbitr.* A. *&c.* Agreed that the words (*Vult & concedit*) are void, but the condition begins at the words, *Si ſteterit*, which make a good condition, for the other are words of grant by the Obligee, where it was only the deed of the Obligor. But *Browne* ſaid; That he might have pleaded, that it appeareth by the deed

be given in them upon condition, that if the donee dy without iſſue, that the donor may enter, it is not a condition, becauſe nothing is reſtrained, ſo if it be, if the Leſſee do waſt, that the Leſſor ſhall enter, it is no condition, becauſe it gives nothing but what the law gives before, See Com. in Binghams caſe, Se ipſe velit inhabitar, *is not a condition, becauſe it is not compulſory, but gives the party an election, which are not words properly conditionall.*

Vide Aſſiſe, 10. 10 *l. was granted to husband and wife, and if the husband dye, living the wife, that ſhee ſhall have* 3 *l. and that if the wife dyed living the husband, that he ſhall have* 40 *s, adjudged that the wife ſhould have the* 10 *l, notwithſtanding this limitation, becauſe it is no reſtraining of the firſt part of the deed, but ſtands with the deed.*

that the Obligor had granted that if &c. *vide* 21 *H.*6.51. *Barre* 157.

A feoffment rendring rent, and for non payment it ſhall be Lawfull to the feoffor and his heirs to take back the Land, this is a good Condition, *M.*6.*E.*2. *Entre Cony.*55. And ſo it is of the word Retainer, *Perkins* 143. and *Perkins* ſaith, that this word, that he may lawfully e nter for not payment is a good condition, 144.

In Aſſiſe the Tenant ſaid, that he gave the ſame Land to the Plaintiff upon Condition (by Indenture ſhewed) that he ſhould be this Squire in time of peace &c. and that the Tenant ſhould find him a horſe, cloaths, meat and other neceſſaries, and at what time that the Tenant ſhould refuſe that the Plaintiff ſhould hold the Land diſcharged of the condition, provided notwithſtanding if he be ſick, that then he ſhall have the Lands, and neceſſaries, when he recovers, and is required and refuſeth, that then the Tenant may enter, and alledged a requeſt, and the Plaintiff ſaid, that before the requeſt, he required the Tenant to find him neceſſaries, which he refuſed, ſo as he had cauſe to hold the Land &c. It was adjudged that the Plaintiff ſhould recover, and that the Proviſo ſhould have relation onely to the Words ſubſequent, *viz.* if he be ſick &c. and that the Land ſhould revert upon requeſt and refuſall, which is not alledged by the Tenant, *H.*13.*H.*4. *Entr. cong* 57.

Vide C. 2. *part Cromwels caſe* 35 *H.*8. *Br.*57. 27 *H.*8 47, 48. *when the word (proviſo) ſhall make a Condition, when a Covenant, when an exception, and ſee here* 3 *things requiſite to make the word (proviſo) to be a condition.* 1. *That it do not depend upon a nother ſentence.* 2. *That it be the words of the Donor, Feoffee, or Leſſor.* 3. *That it be compulſory.*

A Condition that my Feoffees (*ſi qui fuerint*) ſhall releaſe to *T.* refer to the time paſt, but a Condition that I ſhall give all my goods (*ſi qui fuerint*) ſhall referre to the preſent time, ſo condition to be non ſuit in all actions (*ſi qui fuerint*) 35 H.6.13. & 14.

Leaſe by Indenture, Proviſo that if the Leſſor will occupy the Land, without letting it to farm, then the Leſſee doth bind himſelf by the ſame Deed to remove upon warning given him *&c.* and it was holden by *Fitz.* and *Audley*, that the ſame was condition, and the clauſe that the Leſſee binds himſelf, *&c.* ſhould not defeat the effect of the Proviſo, but declare the aſſent of the Leſſee. So a Leaſe rendring Rent, upon condition if the Rent be behind, that the Leſſee grants that the Leſſor ſhall enter, and it was holden there a good condition, and ſo Proviſo, that if the Leſſor will occupy &c. without any more, otherwiſe it is of Proviſo, if the Leſſor pay 20 l. 27 *H.* 8. 18.

Vide C. Lit. 204.4. *Ma. Dy.* 138. *The words* Ad faciendum ea intentione ad effectum, ad propoſitum, *do not make the eſtate in the Land conditionall in the caſe of a common perſon, but otherwiſe in the caſe of the King. Vide* 31. *H.* 8. *br.*35. *Doctor and Student* 125. *Vide Plowden comment.*

The King gave Land, to the effect that the grantee ſhould give the ſame in *Mortmain*, this is a good condition to re-enter for not doing of it 38 *H.*6.35.

Proviſo, That *J.* my Sonne being my Heire releaſe, the ſame is good, and if *J.* hath an elder brother who dieth, now I ought to releaſe, and ſo the preſent time taken for the time to come by *Fitzh.*27 *H.*8.17.

If a man leaſeth without impeachment of Waſt, Proviſo that the Leſſee

ſhall

ſhall not do Waſt *in domibus voluntarie*, now if he do voluntary waſt in houſes, the Leſſor ſhall have an action, and alſo for every other waſt, and is not put to his Writ of Covenant, as if it were by another Deed, but yet this Proviſo ſhall not defeat the eſtate, 9 *H.* 6 35.

5 Eliz. Dyer 222. C. 2. part 72. Cromwells caſe a Leaſe for years, rendring rent, proviſo, that in the time of vacation, the Rent ſhall be paid to the Chapter, the proviſo was not a condition, but an exception.

A Leaſe made for life, Proviſo that he ſhall not hold the Land after the death of *T.* the ſame is a limitation of the eſtate, and a Proviſo may be an Exception onely, and the ſequell of the Words ſhall expreſſe it, *T.* 27. *H.* 8. 17.

A Leaſe rendring rent upon condition, that if it be behind, that he ſhall enter and ſell the Chattels for the Rent, the ſame doth not defeat the eſtate, 19 *E.* 3. *Barre* 280.

VII. *How the Condition of a Feoffment, to pay money to him, his Heirs and Executors, or by him, his Heirs or Executors, to whom, and by whom it ſhall be performed.*

3. Ma. Dyer 140. a. M. 24 Eliz. cur. wardor. A Feoffment upon condition that the Feoffee pay to Feoffor his heirs or Aſſigns 20 l. before ſuch a day, the Feoffee may pay the money to the heir or executors, but if the Feoffment was upon condition that the Feoffor pay to the Feoffee his heirs and executors 20 l. ſuch a day, and the Feoffee dieth before the day, the money muſt be paid to the Heir, and not to the Executors, becauſe they are not aſſignes of the eſtate.

A Feoffment upon Condition, that if the Feoffor or his Heirs pay to the Feoffee, his heirs, or Executors, 10 l. before ſuch a day &c. and both die, and the Heir of the Feoffor doth pay the money to the Executors of the Feoffee, this is good, and he ſhall enter upon the heir of the Feoffee, but *quære* if there be acquittances without payment in fact if the Heir ſhall be put out, *H.* 12. *E.* 3. *Condition* 8. *T.* 13 *E.* 3. *Condition* 10.

But ſee where the Condition is, that the Feoffor or his Heirs, ſhall pay to the Feoffee or his heirs, it ſeems the payment is good to the Heir, or to the Executor, but none of them ſhall have an action for it, and the Deed of Feoffment doth belong to the Heir, and not to the Executors, 12 *E.* 3. *Condition* 9. But *Littleton* conceives that in this Caſe the payment ought to be made to the Heir, and if he be not named, then to the Executors, and not to him, *Lit. Chapter Conditions.*

The diſſeiſor doth releaſe to the diſſeiſee, upon condition, that if he pay &c. that it ſhall be void, the diſſeiſor makes a Feoffment, the diſſeiſee tenders the money at the day and place, and after he pays it to the Feoffee in Court, the ſame is good, 17 *Aſſ.* 2. *Condition* 14. And it was holden in ſuch caſe, that the payment to the diſſeiſor, or to the firſt Leſſee or feoffee was good, and that he ſhould put out the laſt purchaſor, 31 *E.* 3. *Monſtrance des faits* 14. *P.* 10 *E.* 3. *acc.*

A Deed

A Deed was delivered upon condition to pay &c. to a ſtranger, and in detinue upon Garniſhment againſt him, it was returned that he was dead without Heir or Executor, but that the Ordinary had ſequeſtered who was warned & by Attorney appeared, to whom the moneys were delivered, but he put in ſureties to render them to the Court, if &c. For the Court doubted if the Biſhop or the other to diſtribute ſhould have them or the King, *M.* 48 *E.*3 *Garniiſhment* 31.

*Vi.C.Lit.*206. *and there* A.28 *Eliz. in Com. B. Watkins and Aſhwells caſe, adjudge if the Mortgagor dieth, his heir within age, the Guardian in the name of the heir may tender the Money at the day, in reſpect of the intereſt which hee hath in the Land after the Condition performed. So if the heir be an Ideot, any man may tender the money at the day in reſpect of his abſolute Inhability.*

And note upon ſuch a Condition of payment by the Feoffor himſelf, if a day be appointed, payment by the heir or Executor is good, and if the Feoffee upon Condition of his part make an alienation, the alienee may pay the money, *Lit. Chap. Conditions*, and therefore an annuity granted by an Abbot, untill he ſhall promote the grantor to a Benefice, and no day is appointed, the ſucceſſor ſhall not tender him the Benefice, if the Predeceſſor did not do it, 15 *H.*7.3. and if a Leaſe be made, Proviſo that if the Leſſor will occupy the Land, that the Leſſee ſhall ſuffer him; if the Leſſor die the ſucceſſor ſhall not occupy the Land, 27 *H.*8.18.

VIII. *How a double condition, as one on the part of the Feoffor, another on the part of the Feoffee ſhall be performed, and when one or both ſhall be performed.*

CONdition if the Feoffor pay 4 l. &c. that it ſhall be lawfull for him to re-enter, and if he do not pay it, and the feoffee pay him 4 l. that Law ſhall keep the Land in Fee, or otherwiſe that the Feoffor ſhall reenter, now if none of them pay the money at the day, the Feoffor may reenter by the laſt words, 12 *E.*3. *conditions* 8. but if they were left out *&c.* the Feoffee ſhould hold the Land, 12 *Aſſ.*5. *Condition* 13.

And when the condition is, that if the Feoffor pay &c. and if he doth not pay, if the feoffee do not pay to him, &c. and the one or the other doth not pay at the day, the Feoffor ſhall enter, 13 *E.*3. *Conditions* 10.

A Deed was bailed upon condition, that if *T.* did not pay certain money &c. and if the Plaintiff do deliver a certain ſum to one *A.* that the Deed ſhould be delivered to the plaintiff, and the plaintiff declared that *T.* did not pay, and alſo that he himſelf did deliver the money to *A.* &c. 48 *E.*3. *Garn.* 31.

IX. *Where the Releaſe of a Right ſhall be upon condition, and where a Releaſe or a Feoffment abſolute ſhall be defeated by a a Defeaſance after made.*

IT is holden that a Releaſe of a Right which goes by way of Extinguiſhment cannot be upon condition 21 H.7.30.

A Releaſe to him who is ſeiſed, may be defeated by a defeaſance upon condition, as a Feoffment, Obligation, Recogniſance, by *Shard*, 17 *Aſſ.* 2.31 *Aſſ.*32. there the Defeazance was made after the Releaſe, and it was held by the Court, that ſuch a Defeaſance after the Releaſe, if it be not awarded to be made at the ſame time, cannot defeat the Releaſe, otherwiſe if it be made at the ſame time, *vide* 34. *Aſſ.*44.

Herm. Juſtice held that a Releaſe ſhall never be defeated by a condition which is not compriſed in the ſame Deed, H.4 *E.*2.Releaſe 50. but ſee 31 E 3.Releaſe 41. that it ſhall as well be defeated by an Indenture being delivered at the ſame time, as by a condition compriſed within the ſame Deed. *See Perkins* 138. And he ſaith, that where the Defeaſance is by another Deed after, and the father perform the condition, that he to whom the Releaſe was made ſhall be ſaid ſeiſed to his uſe, *quere*, and he held it all one of a Releaſe which goes by way of Extinguiſhment, as of that which goes by way of enlargement of the eſtate, or of Feoffment, 139.

A Warranty may be defeated by Defeaſance after made, 43 E.3. 44.

A Rent was delivered into the hand of another to be delivered to the Plaintiff upon certain conditions performed, and afterwards by deed it was agreed betwixt the parties that upon certain other conditions to be performed by the Tenant that the Releaſe ſhould be void, and it was conceived that the Releaſe was well avoided thereby, 32 *Aſſ.*11. And note that a Releaſe was upon a *vis* before made; and ſo did inure by way of enlargement of the eſtate.

Vide Plo com. 156.43 *Aſſ.* 1. 17 *Aſſ.*2.21 H. 7.23.& 30. *Br. Conditions* 103. *that a releaſe may be defeaſanced upon a condition.*

Vide 7.H. 4. *A difference between things executed and executory things executed by releaſe cannot be diſſeiſed,* contr. *of things executory. See Lit. Chapt. Releaſes; that a Right extinguiſhed by Releaſe muſt be reared by a condition, as the beſt Releaſe of the Diſſeiſee to the Diſſeiſor.*

X. *Where a Condition Limit &c. ſhall be performed at another place and day, and where at the ſame day and place, and how &c.*

A condition of a Releaſe if he pay to B. at ſuch a day, he tenders there the money the ſame day, the other comes not, wherefore he tenders at another day and place &c. and the Releaſe avoided, *vid.* tender elſewhere is not good, but payment is, 17 *Aſſ.*2. and ſee there, that a condition to build a houſe at ſuch a place, ſhall not be tendred at another place, becauſe it is not poſſible to be performed elſewhere &c.

A Con-

A condition to ſerve the Obligee in armes, in ſuch a place by ſuch a time, the obligor ſaid, that he ſerved him at *D.* it is no plea that he did not ſerve him there, but that he did not ſerve him generally, 10 *H* 6 14. *Debt.*34. And though agreement be of payment at another place, yet the obligee needeth not to receive it, 41 *E.*3.15. So of a defeaſance of a Statute, *H.*46.*E.*3. *Audita querela*; And 12 *R.*2. *Barr* 243.

Aman makes a feoffment upon condition of his part, and dyes before the day, his heir being within age, the day paſſeth, and afterwards the feoffee grants the heir a longer day of payment, and tenders, the feoffor refuſeth, the heir enters, and his entry adjudged lawfull, 31 *Aſſ.* 17. *Conditions* 15 Note, that in that caſe, the wife of the feoffee ſhall be endowed, if it were againſt a man of full age, notwithſtanding ſuch agreement after, 42 *E.*3 1. *Perkins* 76. But in the firſt caſe of payment, if the defendant plead generally payment of ten pounds, which is the leſſe ſum, and no payment nor tender at the day appointed, the ſame will not ſerve, but the plaintiff ſhall recover, and the ten pounds ſhall be received out of the penalty, 47 *E.*3.13. *Barr* 218. So where he hath an acquittance of parcell of a greater ſum, *&c.* 6 *E.*3.8. *Debt* 155.

A Condition to be performed by a ſtranger, cannot be at another place, 36 *H.*6.12. *Barr* 74.

Where the condition is to ſtand to an award, *&c.* who award payment by ſuch a day, now before the day it is in the election of the Defendant to pay the money, 36 *H.*6. *Debt* 196.

Where the condition was, that he ſhould enfeoff the Obligee, *Circa feſtum*, iſſue was taken if he were at the place the evening, *&c.* 22 *Edw.* 4.43.

So if a Condition be performed, *Citra, circa, or infra feſtum*, ſhall be in the Eve, at leaſt, 21 *E.*4.62. But where a day or a time is appointed, performance thereof before the day is holden good, by *Fineux*, 9 *H.* 7. 17. and 20.

A condition to enfeoff the Obligee ſuch a day, the Defendant ſaid he was ready, and the other came not, and it was holden that the iſſue ſhall not be upon the coming of the plaintiff, but if the Defendant were ready, *&c.* *P.* 32 *E.*3. *Barr* 262.

C. Lit. 201. 20. *H.*6. 30. 40 *aſſ.* 11. *Plow. Com.* 71. 72, 15 *Eliz*, *Dyer* 319

See of ſuch condition, 40 *E.*3. 12. and 22 *E.*4. Where it is ſaid, that if the one nor the other doth not come, the Obligation is forfeited, but *Brian* held the contrary, 22 *E.*4 43. but if a condition be to enter for not payment, the eſtate ſhall not be forfeited without a demand, 20 *H.*6. *Entre Congeable* 6.

Leaſe is made rendring rent, and a re-entry for not payment at the day or within a moneth, it ſufficeth for the Leſſee to be ready at the laſt inſtant of the laſt day. So of an Obligation upon condition, 6 *H.* 7:9. *Entre congeable*, 22. agrees, where it is to be performed by the Plaintiff himſelf, *Perkins* 150. 22 *E.*4.43. 21 *E.*4.62. and 7 *E.*4.3. It ſeems certain iſſue, that the Defendant was at the place all the day, and the other iſſue of the laſt

laſt inſtance is doubtfull, but if at any time of the day or of the evening the Obligor tender to the plaintiff being preſent, the mony, the forfeiture is ſaved, 7 *E.*4.4. *vi. Perkins* 166. agrees upon a Leaſe upon condition to be payd within a moneth, tender upon the land within the month, ſhall ſave the forfeiture, becauſe he is bound to receive it. But *Paſton* ſaid That where the condition is to pay, *&c.* before ſuch a day, or at ſuch a day; if he tender in the firſt caſe before ſuch a day, or in the laſt caſe before the laſt inſtant of the day, yet upon demand after, he ought to perform the condition, otherwiſe the Leſſor may well enter, the ſame reaſon, if he were bound, he ought to be ready at the place at the laſt inſtant of the day, notwithſtanding the tender before, 4 *H.*6 9. 19 *H.* 6. 76. 19 *E.* 4. 1. But if he be ready at the laſt inſtant, and the Obligee or Feoffee cometh not, all is ſaved without more adoe, 6 *H.*7. 2. So it ſeems if an obligation be to pay a leſſer ſum of mony in groſs before ſuch a day, and no place is appointed, that tender at any place before ſaves the Obligation.

*Vi.C.*5 *part* 114. *in Wades caſe.*

*Vi.*22 *H.*6 29. *C.*9.*part* 79. 7 *H.*4.18. 5. *Ma.Dyer.*150. 19 *H.*9,12. 16 *H.*7,13. 19 *E.*4.4 *b.acc.*

See according to the opinion of *Paſton*, That he who is bounden to ſhew his Evidences to the councell of the other, before ſuch a day upon requeſt, and he tenders them upon requeſt, and the other refuſeth, yet he ought to perform it upon any one requeſt, 19 *E.* 4.1.

A Condition to be performed, *In Feſto Pentecoſtes*, ſhall be performed the firſt day. 21 *E.*4. 62.

XI. *How a Condition ſhall be performed when no day nor place is appointed, and when it ſhall be performed.*

A Releaſe upon condition of payment on the part of the Releaſor, if no place be appointed, he may tender the mony upon the land, *&c.* or unto the perſon himſelf, *&c.* 17 *Aſſiſe* 2. but *Littleton* ſaith, it ſhall be only to the perſon.

8 *E.*4.4. 21 *H.* 7.74. *in Kelleway, C.Lit.* 210. *C.*8 *part, in Barnes caſe.*

See 11 *H.*4.61. By *Skhene*, 19 *H.*6.50. By *Forteſcue*, That the tender ſhall be upon the land mortgaged.

And note, That upon a Leaſe of Land rendring rent, that it ſhall be tendred upon the land, alſo if he ſaid at in the end of the deed, *Ad quas conventiones per implend. obligo me, &c.* But if the Leſſee be bounden in an obligation to pay the rent, he muſt find out the Leſſor at his perill, 21 *E.*5 51. 22 *H.*16. *acc.*

*Lit.*78.*acc.*

But ſee where *B.* was bound to *C.* that *D.* ſhould pay his rent, there it is ſufficient that he be ready upon the Land, by *Littleton*, 8 *Edw.* 4 21.

A man makes a feoffment in fee upon condition, that he ſhould give back the land to him and his wife, in ſpeciall taile, the remainder unto the heirs of the husband who dyed, and the wife tooke another husband,

how the feoffee ought to enfeoff the ſecond husband and the wife, for the life of the wife, the remainder to the heirs of the firſt husband, 2 *H* 4. *conditions* 5. 12 *H*.4.3. and if that all but one dye, where there were many remainders, yet he muſt perform to him, and there is no difference, if it be to be performed to the feoffor or a ſtranger.

But if a day be appointed, and he who ought to take the Eſtate is dead at the day, the feoffee ſhall hold the lands for ever, 19 *H*.6,76. But *Quare*, for afterwards it is ſaid, That if a feoffment be upon condition that the feoffee ſhall go to *Rome*, and he dye before the day appointed, that yet his heir ſhall not hold the land, 19 H.6.77. But if the day of the feoffment be appointed and none is there to take the eſtate, in the firſt caſe the feoffee ſhall hold the land for ever, *vi. Perkins* 155. but if no day be appointed, if he who ought to be enfeoffed refuſeth, yet it ſhall be be performed to his heirs, 19 H. 6.77.

A feoffment to re-infeoff the feoffor, the ſame ſhall be upon requeſt, but if it be to enfeoff a ſtranger; it ſhall be in convenient time without requeſt, but a feoffment upon condition, that the feoffee ſhall pay, *&c.* he ſhall have liberty during his life, but upon an obligation to enfeoff a ſtranger, or to pay to a ſtranger, he ſhall have liberty during his life, *Perkins* 154 155. But upon an obligation to pay a leſſer ſum to the Obligee himſelf, and no day is appointed, it is payable preſently, 9 H.7. 17. 44 *Edw.* 3. 8.

He who is bounden to go to *Rome*, hath liberty all his life time by *Paſton*, but if the Condition be to go, if the obligee doth enfeoff him, he ought to go immediatly after the feoffment, and if it be to enfeoff the Obligee, he hath liberty during all his life time, *M.* 33 *H.* 6. 48. *Barr* 64.

But ſee P. 14 *E*.3. *Debt* 138. where in debt upon an obligation the Defendant pleaded a Deed of Defeaſance, if he did enfeoff the plaintiff, and no day appointed, and he durſt not demur, but pleaded that he was yet ready, *&c.*

The Kings Tenant enfeoffed a ſtranger to give the land back to him in taile, the remainder to his right heirs, and this was by licence, and dyed before the re-infeoffment, the King ſeiſed the body of the heir, and entred for the condition and well, 19 *E*. 3. *Entry congeable* 39. But ſee before, that the feoffee may perform the Condition to the heir, where no day is appointed.

An Action upon the caſe againſt *W.* for that he was retained to purchaſe the mannor of D. of one *J.* for the Plaintiff, and he had purchaſed the ſame for himſelf, yet becauſe the retainer was to purchaſe of *J.* certain, who was dead before the purchaſe, the purchaſe after was holden no deceit, *M.*16 *H.*6. Action upon the caſe, 44.

A condition to ſtand to the award of *T.* who awards that the obligor ſhall pay 20 *l.* and appoints no day, the Defendant did alledge a tender, *&c.* 22 *H.*6. *Debt* 47. and holden that it ought to be performed ſo ſoon as he

he had notice of the award, whether it be to make a feoffment, or to pay money, or to be non-ſuit, but an award that one ſhall levy a fine, ſhall not be performed, untill the other hath ſued out a Writ of Covenant, 20 *E.*4.1: *and* 8.

Delivery of mony, or *&c.* to deliver over to an eſtranger, and no day appointed, ſhall be performed in convenient time, 21 *E.*4.52.

Where the condition is to renounce his intereſt, *&c.* before ſuch a Biſhop, and he refuſeth, the ſame is a forfeiture, although he perform it afterwards in reaſonable time, for it ought to be performed preſently, if it can be, and ſo refuſall is a forfeiture, ſo a condition to be non-ſuit, to ſuffer a *Retraxit*, or to levy a fine *&c.* upon requeſt, *&c.* 15 *E.*4.30. But *Prima facie*, it ſhall be a good plea, that he renounced before the writ brought, ſo upon an arbitrement, 20 *E.*4.8.

But ſee where the condition was, that if he do prove that the Will of *T.* was, that the other ſhould enfeoff him, *&c.* it ſhall be intended, that the proofe ſhall be before the Juſtices by verdict, and then be there a day appointed or not, if the Obligee doth not bring his action, ſo as he may have an inqueſt, he need not to perform it, and it is ſufficient now to ſay, that it was his will, otherwiſe it is, if the condition was to prove before, *T.* for there it ſhall be intended by Witneſſes, *&c.* 10 *E.*4.11. 15 *E.*4. 25. and there it is ſaid, that to the condition to prove my wife not guilty *&c.* it is ſufficient to ſay, that ſhee is not guilty, and ſo of others, for the iury ſhall try it 15 *E.*4.15.

XII. *Where performance after the time is good, and where he ought to be alwaies ready, or longer time given.*

THe Mortgagors may pay the monys to the Aſſignee of the Mortgagee after day, but by *Littleton*, it ſeems that is not needfull for him to do, if he did tender the mony to the party at the day appointed, *&c.* 17. *Conditions* 14.

CONTRACTS BARGAINES, AND BUYINGS.

IF a man bargain and ſell for mony, and doth not ſay to him and his heirs, yet it is a good ſale in fee, by *Shelley*, in 27 *H.* 8. 5. and of the ſame opinion was *Andley* Lord Chancellor.

If Tenant in taile in poſſeſſion, or in uſe, giveth or ſelleth Trees, and dyeth, the Vendee or Donee may cut them, and carry them away, by *Fitzherbert* and *Shelley*, 27 H.8.5. but by the opinion of *Hauleford*, 11 H.4.32. It ſeems that the Vendee or Donee of Tenant in taile, cannot cut the trees, wherewith agrees *Plowden* 259. in Donee *Hales* caſe, and ſo it is, if a man be ſeiſed of Land in the right of his wife, and ſells the trees, *vi.* *Perkins* 13. and 18 *E* 4.6.

Note, *Per curiam*, 27 H:8:25: That a ſale or a gift to a feme covert, is good, if the husband agreeth, or doth not diſagree, ſo as the ſale is not void but voydable, *vid.* 21 H.7:40: by *Read, acc.* But *Fineux* held the contrary, for he ſayd, that a feme covert ſhall not do a thing which ſhall turne in prejudice of the husband, but for that which ſhall be for his advantage, it ſhall be good, if a man give any thing to the wife, the ſame is good, by the agreement of the husband, becauſe it may be for his advantage, contrary, If the wife buy a thing in the market, for that may be to the prejudice of the husband, but if ſhee buy it to the uſe of the husband, & he agree to it, there it is good, or if it be by his commandement, and he ſaid, that if the wife buyeth breed, or any thing which is ſpent in the houſe of the husband, if he hath no knowledge of it, he ſhall not be charged with the contract: Note, in 19 H-6 9: That the buying of an obligation by the wife, in which the husband was bound in 10*l.* is void, and ſo is the contract of an infant, 39 *E* 3: but if the wife expreſs the uſe at the time of the bargain, then the contract of the wife ſhall binde the husband, 20 H:6:22: By *Newton*.

Where

Where Contracts are ruled according to the intent of the parties.

Two made a Contract for 18 Barrells of Beere, and after the Beere was ſpent the vendee would have had the Barrells, and adjudged he could not have them, becauſe the intent ſhall rule the Contract; So if one promiſe one to give him a cup of Wine, he ſhall not have the Cup, 27 *H.* 8.27. by *Fitzherbert*, but if one promiſe to give one a Hogſhead of Wine, there he ſhall have the Hogſhead, *Plowden Comment.* 86. So as the phraſes of Speech declare the intent of the parties: So if I grant to one that he may hunt in my Park and kill a Buck, yet he ſhall not have the Buck, 18 E.4.14 13 *H.*7.13 *acc.* 12 *H.*7.25.

When in Contracts there ought to be Quid pro Quo & e contra.

IN Treſpaſſe upon the Caſe, the Plaintff declared that the Defendant took upon him to build a Mill by ſuch a day, and becauſe he did not ſhew in the Declaration what he ſhould have for his labour, the Declaration was holden to be void, and there by *Rolfe*, if a man take upon him to do ſuch a thing, and it is not expreſſed what he ſhall have for his labour, it is a void contract, for there ought to be *Quid pro Quo*, 3 *H.*6. 36. *See* 9 *H.* 5 14. a promiſe to pay 10 l. is not good, without having *Quid pro Quo.*

*I*f a man ſell a horſe for 10 l. where as he hath no horſe, yet Debt lieth; and yet there is not *quid pro quo.* So if a man ſelleth his Mannor for 10 l. Debt lieth, and yet the Land doth not paſſe untill Liverie: So if *I* promiſe to *I. S.* 10 l. for carrying the Corn of *I.D.* to ſuch a place, he ſhall have Debt, yet *I* had not *quid pro quo.* So a promiſe made to a Chirurgeon to cure *I. S.* of ſuch a Diſeaſe or Wound, 37 *H.*6.8.

In an Action of Waſt in cutting down and felling of his trees, the Defendant pleaded that the Plaintiff ſold him *omnes arbores ſuas creſcentes ſuper &c.* and it was holden, becauſe that it was not ſhewed for what the Plaintiff ſold him the trees, it was but a void contract, and there was not *quid pro quo*, 1 *Mary. Dy* 91.

If I come to a man to buy a piece of cloath of him, and ask the price of it, and he ſaith 10 l. I cannot take it away, unleſſe I pay the 10 l for that is implyed in the bargain, that he ſhall preſently pay the money for the cloath, otherwiſe that he ſhall not have it; but if it be for dayes, there it is a good bargain, becauſe I have given him an expreſſe liberty to pay

it

it at the day, 21 *H.*7.6.*b.* and *Fineux* Chief Juſtice ſaid, that if a man will buy a piece of cloath in *London*, and demands the price of the Merchant, and he ſaith 10 l. and the Plaintiff ſaith he will give ſo, and takes away the cloath, that it is in the election of the Merchant to make it a bargain or not, for if he will, he may have an action of Debt for the 10 l. or elſe he may detain the cloath untill he hath received the money for it, and if the other partie taketh away the cloath by reaſon of the bargain, the ſeller may have an action of treſpaſſe againſt him, 21. *H.*7.160. *vide* 14 *H.*8. 19.5 *E.*4.3. *acc.*

14 *H.*9.19.*acc.*

But if a man doth buy of *J.S.* a horſe for an ox, there each may take the thing without delivery, but it was otherwiſe in caſe of cloath, for there he cannot take it without deliverie, or a day appointed for the payment of the mony, 21 *H.*6.*acc.*

A bargain was made that *J.S.* ſhould go to ſuch a place and ſee his corn, and that if he liked of it, and payed 10 l. that he ſhould have the Corn: in an Action of Treſpaſſe brought for taking the Corn, the Defendant pleaded that he went unto the place and liked the Corn, but becauſe he did not ſhew that he paid the money, it was holden to be no plea, for without payment it was but *nudum pactum*, 17 *E.*4.1. *Plo.Com.*6.& 11.

In 18 *E.*45. A man ſeiſed of Lands in the right of his Wife, for a certain ſumme of money ſold 400 trees upon the Land, afterwards his wife died without iſſue, ſo as the husband was not intitled to be Tenant by the curteſie, and the Vendee had not cut down the Trees, yet it was holden that an action of Debt did lie for the Money, becauſe he might have cut the trees in the life of the Wife, but if a day had been appointed when the Trees ſhould be cut down, and the Wife had died before that day, there it was but *nudum pactum*, and the party had no remedy for the money, 28 *E.*4.21 *acc.*

If I ſell the horſe of *J.S.* for 10 l. and the owner takes away his horſe, yet it is ſaid in 18 *E.*4. that Debt will lie for the Money, becauſe it was a contract once executed, but note there by *Littleton* 6. that if the horſe dieth in the Stable between the Contract and the delivery, that yet the other ſhall have Debt for the money.

A man doth bargain with *I.S.* to teach him ſuch a Trade within three years, for which he was to give him 10 l. and enfeoffed him of the Land, untill the 10 l. was paid. *I.S.* died within the three years; it was holden in that caſe that he ſhould retain his Land untill the Money was paid, 21 E.3. *Contracts* 12. but if the bargain had been to give him 10 l. and he had not paid it, there it had been *nudum pactum*, and he had no remedie for the money.

Contracts where good although they be conditionall.

IF two agree, that if one of them delivereth twenty cloathes, that then the other will pay him 10 *l.* the ſame is a good contract although it is conditionall.

If I ſell you my horſe for ſo much mony, as *J.S.* ſhall name, the ſame is good if he name the mony, and if not, it is a void contract, 10 H.7.7. 21 H.6 6. 17 *E.*4.1. So if I ſell you my horſe for 10 *l.* upon condition, that when I come to *Pauls*, that I ſhall have my horſe again, now when I come to *Pauls*, I may take back my horſe again, by *Pollard*, 14 H.8.21. and ſee the caſe before, 17 *E.*4.5. A bargain was made, that *J.S.* ſhould go to *D.* and if he liked of his corn there, that he ſhould have it, the ſame was a good contract upon the condition performed.

So ſee 18 *E.*4.16. In an actiou of debt, the Plaintiff declared, that it was agreed betwixt the Plaintiff and the Defendant, that the Plaintiff ſhould deliver to the Defendant, 10 *l.* for certain bales of woad, if the woad pleaſed him, and if not, the Defendant was to re-deliver back the 10 *l.* the Defendant pleaded, that after the bargain, he ſaw the woad and liked it, and afterwards to the ſame day he diſagreed to the bargain, and there it was holden by all the Juſtices, that if he once agree to the bargain, his diſagreement afterwards is to no purpoſe, ſo if he diſagree at the firſt, his agreement afterwards cannot make the contract and bargain good, but there it was holden clearly by them all, that a Contract which was conditionall was a good contract.

When a Contract determined in part, is determined in all; and where preſerved in part, is preſerved in all.

IN Debt for 20 *l.* upon a Contract, the Defendant ſaid, that the Plaintiff took an obligation of 10 *l.* for parcell of it, and it was holden a good plea to the whole contract, for the Contract being determined in part is determined in all, 3 *H.*4.17. and therewith agree the books of 1 *H.*6.8. and 29 *H.*8. *Dyer* 23. where it is ſaid, that if a man indebted upon contract for money, taketh an Obligation for it, that the contract is utterly gone, ſo is it upon a judgment given upon a bond, the bond is gone, 22 *H.*6.5. *and* 6. 29 H. 8. *Dyer ibidem*, So if a man be indebted upon account for arrerages, if he take a bond for the mony, the contract upon the account is gone, yet ſee the book of a 11 H.4.79. contrary, where a man brought an action of account for arrerages found before the auditors, and the defendant pleaded, that the Plaintiff took a bond for the ſaid arrerages;

Arrearages; and yet it was adjudged that the Action did lie, for that the Arrearages being due by matter of Record, the taking of the Obligation did not detain and make void his Action upon the Action, and in that Caſe it was adjudged for the Plaintiff, *vide Fitz. Bar* 185. *acc.*

If a man leaſeth Lands for years rendring Rent, if the Leſſor entereth into part, the whole Rent is gone, but if another entereth by a Title Paramount into part of the Land, yet the whole Rent remains: So if a man ſells a thing, which is his own proper goods, and the goods of another man for 10l. if the other man taketh his goods, yet the Seller ſhall have an Action of Debt for the whole money becauſe the Contract was one entire Contract, 9 *E* 4.8.30 *H*.8.29 24 *H* 8, 9. *acc.*

One agreeth to ſerve a man for a year for 20 s. if the Maſter doth diſcharge him before the year ended, to which he agrees, he ſhall not have any Wages for his Salary, nor Action for it, becauſe it is an entire Contract, and cannot be ſevered, 16 *E*.6.23.

If a man ſells a Leaſe of Land and Goods for 20 l. it is one entire contract and cannot be ſevered, and if one be by defeaſable title, yet all ſhall be iſſuing out of the other, 7 *H*.7.4.24 *H*.8, 9 30 *lib*.8. 29. but ſee 12 *H*.8.11. that if a man leaſeth Goods and Lands for a year rendring Rent, and the Land is evicted by a recovery of it, yet the Rent ſhall be apportioned. *Quod Quere*, for the Law ſeems to be contrary, and in the time of Queen *Mary*, the contrary was holden, becauſe the Rent ſhall be ſaid wholly to iſſue out of the Land, as *magis dignum*, and *Manwood* vouched a Caſe in the time of *E*.6. where leſſee for life of a houſe made a Leaſe for years of it, with Plate and other houſhold ſtuffe Rent, and the Leſſor for life died within the Term, that the whole Rent was gone, ſo the Lord *Dyer* vouched the Caſe in the time of Queen *Mary*, that a man leaſed the Signe of the *Greyhound* in *Fleetſtreet*, and certain ſtuffe rendring Rent, the Leſſor entred and enfeoffed a ſtranger of the houſe, the Leſſee did re-enter, the Feoffee died, his heir brought Debt for all the arrearages after the death of his father, and holden that the Action was well brought, which proves that there ſhould be no apportionment of the Rent, but that the whole Rent did iſſue out of the houſe.

A man was reteined to ſerve for a year for 20 s. the Maſter died within the year, holden that the ſervant ſhall have his Salarie for ſo much as he had ſerved, becauſe the ſervice is diſſolved by the Act of God, *vide* 27 *E*.3.84. *acc.* *See the book* 10 *H*.23. before *contra.*

Where a man may waive the Contract for part, and wage his Law for the reſt.

IN Debt the Plaintiff declared upon a Leaſe of a Chamber, and bed. and that the defendant was to board with him for a certain time, paying 20 s. by

by the week for the whole: the Defendant as to the Chamber and bed pleaded *non demiſit*, upon which they were at iſſue, and it was found for the Plaintiff, and it was moved in arreſt of Judgment, that it was a Jeofail, becauſe he did not anſwer to the boording, and it was holden upon long argument that the Contract being falſe in part, ſhould be falſe in all, and therefore the Plea good, *Quod non dimiſit percellam*; yet *Bryan* was ſtrongly againſt it, and the Juſtices coming from *Weſtminſter* ſaid, that it was a Jeofail. *Bryan* ſaid, that the Iſſue ought to be *Rein luy droit*, and ſo he might give the ſpeciall matter in evidence, but by *Brook* in abridging of the Caſe, it ſtands with reaſon that the Plea ſhould be good, for otherwiſe the Plaintiff by a falſe Declarattion might barr the Defendant from waging of his Law, if the contract were for the boording, and he hath added the Leaſe of the chamber and bed to it, but it ſeems to him that for the chamber and bed, he might traverſe the Contract, and for the reſidue, that he might wage his Law, 21 E.4.28.

What thing ſhall diſſolve and determine a Contract.

IT is agreed betwixt *A.* and *B.* that for learning of ſuch a ſcience, that he ſhall have 10l. *B.* dieth before the money payd, the ſame diſſolveth the Contract, *vide* 21 E.3.11. So if a man leaſeth Tithes rendring Rent, if a ſtranger doth recover them, the ſame doth diſſolve the contract, *ibidem.*

If a man ſeiſed of Land in the Right of his wife, ſelleth certain of the Trees growing upon the Land for 10l. and the wife dieth before the vendee hath cut down the trees, yet the ſame doth not determine the contract, becauſe it was executed of the other party, and it was the folly of him who bought the trees, that he ſuffered them to grow ſo long and ſtand upon the Land, but if a day had been limited, by which day he ſhould have ſevered them from the Land, and the wife had died before that day, her death would not have diſſolved the contract, 21 E.4.5.

A man agrees to ſerve one for a year, paying 20 s. at two Termes, *viz.* our Lady day and *Michaelmas*, and afterwards the Maſter dieth after one of the Feaſt dayes, his death diſſolves the Contract for the time after his death, *vide* 27 *E.*3 before.

If a man taketh an obligation for Money which was due before upon a contract, the contract is determined if the obligation be made by him who made the firſt contract, but contrary if it were made by a ſtranger, 35 *E.*3 *Debt* 83. 29 *H* 8 *Dy.* 22.1 *H* 6.8. by *Babington*, 22 *H.*6.36. by *Chock*, 21 *H.*6.21. *Newton*, 28 H. 6.14. 21 H.7.5. by *Butler*, 11 H.4.79. and there it is ſaid, that an Obligation doth not determine another: as accompt before Auditors.

If a man recover in Debt upon a Contract, although he doth not ſue for Execution, yet the Contract is not determined, contrary if he had recovered upon an Obligation and *Tales*, not Execution, 9 *E.*3.5. by *Littleton.*

If one buyeth a thing upon a liking, or miſliking, if he once miſlike, although that he liketh afterwards, yet the firſt Act hath detained the Contract, 18 *E.*4.15. but contrary, if the miſliking be to a ſtranger, as may be taken upon the book: in 44 H.8.

Sale of a thing not in Eſſe.

IN 18H.6. A Parſon ſold all his Tithes within the Pariſh, which were or ſhould be there for ſeven years after, and it was holden a good Sale: So if a Tenant for life ſelleth all the Profits of his Lands for ſeven years after, it is good by *Paſton* and *Aſcue*; and by them; a man may ſell to me the profits of his Courts, which ſhall be for three years following, and the Sale is good, yet they are not in *Eſſe*; and it is an uſuall thing for a man (who hath Corn or Grain) to ſell 200 quarters of ſuch Corn or Grain to be delivered at a day after to come: 21H.9.43.

Sale of a Bailiff, Servant or Factor.

IF a man hath a known Bailiff, who hath uſed to ſell the beaſts or other cattell of his Maſter, ſuch a Bailiff may ſell them; and although he hath not a ſpeciall Warrant ſo to do, yet it is not materiall. And if he gage the beaſts of his Maſter for Corn which cometh to the Maſters uſe, it is good, and the Maſter ſhall not have an Action againſt him who taketh the cattell or beaſts for that cauſe, as appeareth 27 *Aſſ.*5. So it is holden in 2 *R.*2. and *Old N.B.*61. & 62. where it is ſaid, that in Debt againſt the Maſter the Plaintiff needeth not to ſhew that the Bailiff had a Warrant to ſell the Maſters goods.

If the Maſter commandeth his ſervant to buy certain goods, or his Factor to buy certain Merchandiſes, and he buyeth them, the Maſter ſhall be chargeable although the goods or Merchandiſes never come to his hands, 8 *E.*4.11. But by *Newton*, 20H.6.22. If a ſervant buyeth a certain thing without the command of his Maſter, although it cometh after to his Maſters uſe, yet it ſhall not charge the Maſter, but contrary if he do expreſſe the uſe at the time of the buying of the thing &c. *Doctor* and *Student cap.*42. for the authority of the Bailiff.

If

If a Caterer, Surveyor or Clerk of the Market, buying any thing to the uſe of the King, they are not the Debtees for it, but the King: *vide* 11 *H.*4.28. *contra* if they have not allowance upon their accompt.

What thing is ſufficient to create a Contract.

IF I ſell a horſe unto you for 20 l. you ſhall not have the horſe if you do not pay the money, if the horſe be not preſently delivered unto you, or a day appointed to pay the money, or that you take earneſt for it: but if you be telling the money, and another buyeth the horſe and gives the money, yet the firſt man ſhall have the Bargain; but if he go away for to fetch the money, then it is otherwiſe, if it be not agreed that he ſhall fetch the money: 14 *H.*8.19.

Alſo if a man ſelleth ſtuffe for 40 l. and he delivereth the ſtuffe, and no money is paid, nor day given for payment of it, yet it is a good Contract: 9 H.7.21.

If a man promiſeth to pay or doth agree to pay 10 l. and it is not ſhewed for what thing, it is no good Contract, but a meere contrary, *& nudum pactum*: 9 H.5.14 The principall caſe was, that a man came to me, and ſaid, that if he would relinquiſh his Execution againſt *J.S.* that he would become his Debtor, and upon that there was a Demurrer entered by *Cockaire*, the ſame ſhall not charge him, becauſe it is but *nudum pactum*.

So 15 *E.*4.32. A man ſaith, if if you will marry my daughter, I wil pay you 20 l. Debt doth not lie upon ſuch a Contract, for it is but *nudum pactum*, *Quære* this caſe *F.B.*

Note that where one cannot wage his Law, that he may traverſe the Contract: 33 H.6.43. and 39 H6. 22. where in Debt for a Salarie upon a Retainer in Husbandry, the party did traverſe the Retainer

CORPORATIONS, & CAPACITIES.

I. *What things ſhall be done in the right of a Corporation without Deed, what not.*

A Chantry was founded of three Chaplaines, and one of them juſtified a diſtreſſe as Bayly, and good without a Deed, *Vi.* 26 H. 8. 8. *See* 10 *E.* 4. *contra.*

Alſo 4 H. 7. 6. A man cannot do a thing as ſervant to them, but he muſt ſhew a Deed, but as Bayly or Guardian he may, for by their occupation or taking they are chargeable, and note by *Townſend*, they may appoint a Baily or Receiver without Deed, but *Brian* cheif Juſtice held the contrary.

But ſee 7 H. 7. 9 that of ſmall things, as lighting of Candles, making of fires, or the putting of cattell out of their Lands, or the like, they may do without writing, but to veſt or deveſt a freehold, there they ought of neceſſity to have a Deed proving the aſſent of the Corporation, ſee 12 H: 7: 25: & 26: *acc.* there it is ſaid, that if Baylies do any thing to the uſe of the Corporation, there they need not to ſhew the firſt Deed by which they were made Baylies. and ſee 7 *E.* 4: 14. *acc.* and there the difference is put betwixt a Bayliff and another ſervant.

Alſo he who pleads that the place where the Treſpaſs is ſuppoſed, is the Freehold of an Abbot, *&c.* and juſtifieth by their commandement, ought to ſhew a Deed, 18 *E.* 4: 8. 4. H. 7. 6. and 7 H. 7. 9. and in 12 H: 7: 25: The Dean and Chapter of *Paules*, brought treſpaſs for cutting down of trees, and the Defendant juſtified as Bayly to them, and to repaire pale, which he did, and it was good, although it was againſt the Corporation, being parties:

II. *What things a Corporation may do without Deed, what not.*

IN 14 H: 8: 29: it is holden that a Corporation cannot do any thing without writing, for if they do preſent one to a Church, it ought to be by Deed, and yet in pleading it needs not to ſhew, that it was by deed, for it ſhall be ſo intended.

But the Election of Dean, Maſter, or the like, are made without a Deed, ſo is it of making an Attorney, becauſe the ſame appeareth upon Record, and therefore is good, 13 H. 8. 12. And ſo the uſage is at this day to certifie the Maior to the Exchequer without a Deed.

A Corporation cannot retain a Bayly or a Receiver, or another ſervant without writing, 4 H. 7. 6. by *Brian*, *Tewnſend contra.* Alſo by *Vavaſour*, *ibidem*, A Corporation cannot aſſigne Auditors without Deed, See 16 H: 7. 2. A Caſe adjudged accordingly, and 12 *Edw.* 4. 9. and 10.

A Corporation cannot give warrant to one to do a Treſpaſſe, 4 H: 7: 13. but it ought to be by Deed.

Corporation cannot be diſſeiſors, by agreement without writing, nor veſt nor deveſt any freehold out of themſelves by any meanes without Deed, 7 H: 7. 9: and 12 H: 7: 25. *acc.* for they cannot licenſe one to take any Trees, nor to make Livery, nor give any Intereſt without Deed.

So 9 *Edw.* 4. 39. If a Corporation make a Deed, and delivereth it to one to deliver over, It behooveth him to have a Deed, but *Littleton* holdeth, 18 *Edw.* 4. 8. That one may enter by the Commandement of a Dean and Chapter, without a Deed, but contrary of a Mayor and Commonalty, *Quod non eſt lex ut credo*, for there is no difference, but the commandement of the Dean alone, may be good, as in the caſe of 16 H 7. 2. where it is holden, that the Commandement, of the Mayor is good, but contrary of the Mayor and Commonalty, but that is, as the capacity of the Corporation is, but there it is holden that where there is a Head of a Corporation, as Mayor, or Abbot that in ſuch caſe, if they command, it is good without a Deed, but where there is a Corporation without a Head, as Commonalty only, or Confreeres only, there they ought to have a Writing of the Commandement. *Quære*: And note, That 12 *E.* 4: 10. it is holden that the commandement of the Commonalty is good without Deed, ſo as they may juſtifie, *&c.* The ſame Law, If the Covent in time of vacation of the Abbot, command one to cut down trees, *quod nota*; for *Lit.* there ſaith, that

that that was the opinion of all his fellow Juſtices, and alſo of the Juſtices of the Kings Bench.

III. *What thing the head of a Corporation may do of himſelf, without the conſent of the whole Corporation, what not.*

NOte, by *Brudenell*, 14 H.8.3. That a Mayor or Dean may aſſigne Auditors, or make Baylies, and he may take offering, or make a Steward in his own name by himſelf, and theſe are good during his life, and ſo by him he may make an acquittance in his own name, See 2 *R.*3.7 That the ſumm of an 100 *l.* was due to the Mayor and Commonalty of *Southampton*, by and out of the great Curtaines, and it was holden by all the Juſtices, That if the Mayor alone maketh an acquittance that it is not good, but yet after in that caſe, becauſe it was ſhewed that a hundred ſuch Acquittances had been allowed, the Juſtices at laſt did allow of it.

In 21 *E.*4.76. It is holden, That where there is a Warden and Chaplain, Mayor and Commonalty, Dean and Chapter, the Warden, Mayor, and Dean alone, cannot make a Leaſe alone, nor a diſcontinuance, for no Writ lyeth thereupon; but they ought to be by the whole Corporation, and by Deed, otherwiſe it is void, ſo if any of them make a releaſe in their own names only, it is void; but contrary it is of ſuch poſſeſſions which they have in ſeveralty, but an Abbot may make a Leaſe or a Releaſe in his own name, and it is good, and ſo may a Biſhop, by the opinion of divers,

In *L.*5: *E.*4.70. In Debt againſt a Provoſt and Schollars, the Plaintiff declared of contract of the Predeceſſor of the Provoſt, *&c.* and ſome of the Juſtices held, that it could not be the contract of the Provoſt and Schollars, but of the Provoſt alone: So of an Abbot and Covent, Dean and Chapter, Husband and Wife, it is the contract of the Abbot alone, and ſo of the Dean and Husband; and ſome of the Juſtices held, that the Contract made on the Mannor, *&c:* was meerly void, but it was conceived that the marriage of the Schollars was but ſurpluſage.

In Debt, The Obligation was, *Noverint me, I. Abbatem, de E. &c. In cujus rei teſtimonium, &c: Sigillo conventus appoſui*, the ſame ſhall not bind the Succeſſor, becauſe the Succeſſeor is not named in the Deed, and the Deed was not *Ex aſſenſu conventus*, for it was granted, that a Deed made by an Abbot, *Sciatis me ex aſſenſu conventus conceſſiſſe*, is good; But ſuch a grant by a Dean is not good without the Chapter, for they are parcell of the Corporation, and ſeiſed with the Dean, may implead or be impleaded, ſo is it of a Mayor and Commonalty, and there it is ſaid, that Nelut the Deed of the Covent is a good plea, for if the Plea be not the Deed of the Abbot and Covent, it is double, but *Quære*, for I conceive,

That

That if the Abbot make it in the name of the Covent, and ſeal it with the Covent Seal, although it be made by him alone, yet the deed is good and ſhall bind, *vi.* 14 H. 6. 16.

IV. *How many ſorts of Corporations there are.*

SOme Corporations are made by the King only, 14 *H.* 8 2. as Dean and Chapter, Mayor and Commonalty; ſome by the Pope alone, as the Fryers *Mendicant*, and theſe have not capacity to purchaſe, ſome Corporations by them both, as Abbot and Covent, who are religious, *vi.* 46. 3. 27. *Ceſſavit* brought againſt the Fryers Carmelites, 14 H. 8. 2. by *Fineux*, There is alſo a Corporation which is by the Common Law, as the Parliament, which doth conſiſt of the King, the Lords, and Commons; But note, That that Corporation which is made by the King and the Pope, have not capacity to purchaſe but to the uſe of their houſe, but a Corporation which is made by the King alone, may purchaſe to them and their heirs, as well as to the uſe of the Corporation, and note that it is there ſayd, that a Corporation is an Aggregation, or gathering together of the head and body, and not of the Head alone, or of the body alone, but of both of them together.

Alſo there is another Corporation at the Common Law, by *Danby*, 7 *E.* 4: 12. and that is, when Lands are given to a Parſon and his Succeſſors; *vi.* 40 *E.* 3. 7. *acc.* The like where Lands are given to a Vicar and his Succeſſors, and there is a Corporation alſo by preſcription, *Ibidem*; and ſee *Plowdens Commentar.* 242. That the King is a Corporation at the Common Law:

V. *Corporations without a Head.*

NOte, It is holden by *Thorpe*, 22 *Aſſ.* 67. That a Corporation may be made of the Comminalty without a Head Mayor, or Bayliff, or any other Head, and that is affirmed by the whole Court, 16 H: 7: 2: for there it is ſaid, that when one juſtifieth by the Commandement of a Corporation which hath a Head, as Mayor, or Abbot, there be needeth not to ſhew a Deed, but where one juſtifieth by the commandement of a Corporation which hath not a Head, as by the Commandement of the Comminalty, or Bretheren, *&c.* or the like without a Head, that of neceſſity he ought to ſhew forth a Deed, ſo when any thing is given to Pariſhoners, which is a perſonall thing.

And note, that when the number of the Brethren and Siſters appeare in the foundation of a Corporation made by the King and Pope, that the certainty

Certainty of them muſt bee ſet forth in Pleading, 34 H. 6. 27.

VI. *In what Corporations the Head alone ſhall make Contracts, and what ſhall bring actions alone.*

NOte that the Provoſt of a Colledge, or Abbot, Dean, theſe alone ſhall make the Contract, and the Contract ſhall not be made by the whole Corporation, as it appeareth by the book of *L.* 5 *E.* 4. 70. *Br. Corporations* 53.

And for bringing of Actions the Dean and Chapter uſe to do it in both their names, and not to bring them in the name of the Dean alone, but of an Abbot or Prior it is otherwiſe, 12 *E.* 4. 9. & 10.

VII. *Where one ſhall be named by his Right name of Corporation in actions brought againſt him*, & e contra.

IN 9 *E* 4. 20. If Treſpaſſe be brought againſt an Abbot, it is ſufficient if it be brought againſt him by the name he is known by, but if an Action be brought againſt him, in which the Freehold is demanded, he ought to be named by the right name of his Corporation, by *Newton*, 20 H. 6. 27. 21 H. 6. 45. 16 H. 7. 1. in Treſpaſſe, *vide* 13 H. 7. 14. *contra*

In Debt againſt a Corporation they ought to be named by the right name of the Corporation, ſo every grant ought to be by the right name of the Cerporation, otherwiſe the grant is void, 35 H. 6. 5.

Scire facias upon a recovery had againſt the Prior of Saint *Johns* of *Jeruſalem* in *England*, where the Record was *Prior Hoſpitii Sancti Johannis de Jeruſalem* in *England*, and becauſe he was known as well by the one name as the other, it was holden good, 44 E. 3. 16.

A *Præcipe quod reddat verſus Magiſtrum ſive Cuſtodem, & Presbyteros Collegii de H.* and it was holden good in the disjunctive, becauſe the foundation was ſo, 19 H. 6. 13. and ſo 21 *E.* 4. 56. if a grant be made to them, and it be not according to their right name, it is void.

In Treſpaſſe it is holden, that if the Defendant pleadeth *Miſnomer*, it is no plea to ſay, that the Party is known by the one name or the other, contrary if the plaintiff plead *Miſnomer*, 1 *E.* 4 6. 4 *E.* 4. 7. 25 H. 8. 16. But *Brook* ſeems to agree to the difference in a reall and in a perſonall Action, *See* 20 H. 6 1.

VIII. *Where*

VIII *Where the Head of a Corporation ſhall be named by his name of Baptiſme.*

ANnuity was granted by a Corporation by name of the Provoſt of the Colledge of *E.* and the action was brought by the ſame name, without naming of his name of Baptiſme, and yet good; but in his Declaration he ought to ſet forth his name of Baptiſme. So if an Abbot with the Aſſent of his Covent be bound in an Obligation without naming the name of Baptiſme, it is good, and in a Writ brought againſt the Succeſſor, he did ſet forth his name of Baptiſme in the Declaration, and by *Thirning*, in a Writ of entry upon a Diſſeiſin made to his Predeceſſor, the name ought to be in the Writ, 12 *H.* 4, 9.

If a Dean and Chapter make a Leaſe, *Sciatis nos Decanum & Capitulum dimiſiſſe*, &c. and doth not ſet forth the proper name of the Dean, the Leaſe is void, by *Littleton*, which the Court agreed, 18 *Edw.* 4. 8. *Quare*, for all is errour, as *Brooke* conceives, *Corporation* 73. See 14 *H.* 8. 29,

A grant was made to *J.* Abbot of *D.* where his name was *W.* Abbot, &c. and yet the grant was good, *Vi.* 17 *E.* 3. ſo *Grants* 67. and *vi.* 14 *H* 8. That the Mayor and Commonalty without naming the proper name of the Mayor, may make a feoffment, and by the ſame reaſon may make a Leaſe.

IX. *When Surpluſage in the Name of a Corporation is a fault, where not.*

DEbt was brought againſt *Magiſtrum & confratres ſive ſocios ſuos*, where the Corporation was only Maſter and Bretheren; yet the Writ was good, and ſo is a grant made by ſuch name, for that is the name of the Corporation and more, and the Surpluſage is void, by *Chock*, 20 *Edw.* 4. 12. But ſee 35 *Hen.* 6. 5. where a grant was made of Rent, *Extra Eccleſiam ſancti Pauli & Petri*, where the foundation was by the name of Saint *Peter* only, and therefore the whole grant was adjudged void, *vi. Br. Miſnomer* 9. *acc.*

X. *Whee an Obligation made to a Corporation ſhall go in ſucceſſion, where not.*

DEbt was brought by *R.* Alderman of the Guild *Beatæ Mariæ* in *Boſton*, againſt *L.* upon an Obligation made to *I.S. Nuper* Alderman, and it was to him and his Succeſſors, and by the better opinion of the book, it ſhall go to the Executors of *J. S.* and not to his Succeſſors, *Vide* 32 *H.* 8. *Dyer* 48. So by *Brian*, An Obligation made to the Church Wardens and their Succeſſors, is void as to their Succeſſors, and ſhall go to their Executors: So by *Littleton*, Obligation made to a Dean and his Succeſſors, is void as to his Succeſſors, contrary if it be made to the Dean and Chapter and their Succeſſors: But by *Chock*, an Obligation made to an Abbot and his Succeſſors, without ſpeaking of the Covent, is good to his Succeſſors, becauſe none other of the Corporation is of ability to take but himſelf. An Obligation made to the Preſident of Saint *Johns* Colledge in *Cambridge*, and to the Schollars there, ſhall go in ſucceſſion, but contrary if it be made to the Preſident without naming the Schollars, 7 *Eliz.* adjudged.

It is ſaid by *Chock* Juſtice, That if a Chantry be founded by the name of Chantry Prieſt, and ſucceſſors, and lands are given to him according to that name, that the grant is good, but an Obligation made to him and his Succeſſors, is void as to his Succeſſors, 20 *Ed.* 4.2.

An Obligation was made to *J.S.* Chamberlain of *London*, and his Succeſſors, it was holden in the Kings Bench, *P.* 21 *Eliz.* That his Suceſſceſſors ſhould have it.

A Leaſe was made to a Chantry Preiſt, and his Executors, aud a releaſe was made to him and his Succeſſors, It was holden in the Common Pleas. 21 *Eliz.* in *Wakes* caſe, that he ſhould have but an Eſtate for his own life, for it ſhall dure according to the firſt Leaſe, and that was not to him and his Succeſſors, but to him and his Executors.

Note, That it is admitted, *M.* 7 *E.* 3. 11. *Fitzh. Iſſue* 7. That where a Biſhop having made a Leaſe for years of Land which he had in the right of his Biſhoprick, and then made a Leaſe for life, that he had the Reverſion in the right of his Biſhoprick, and not in his own right.

XI. *Where one ſhall be of a corporation in one degree, and not in another Degree.*

IN Aſſiſe againſt Mayor and Commonalty, they appeared by one of the Commonalty as their Atorny, and the opinion was, that it was good, for one of the Commonalty may enfeoff the Mayor and Commonalty, 3 *H.* 6. 43.

Aſſiſe

Aſſiſe of Nuſans was brought againſt the Dean and Chapter of *E.* and *J.W.* who was one of the Chapter, and yet good, for as he is *J.W*: he ſhall pay damages of his own goods, 46 *E.*3.23.

Treſpaſs for taking of Toll, was brought againſt the Maior and Commonalty of *P.* and *J.S.* it was pleaded to the Writ that *J. S.* was one of the Commonalty, and yet the Writ was adjudged good, and that is in diverſe reſpects, for if the Mayor and Commonalty do diſſeiſe me, and I do releaſe to twenty of the Commonalty by their proper names, it is not availeable to the Maior and Commonalty, and by *Paſton*, if the Mayor and Commonalty diſſeiſe one of the Commonalty, he ſhall have an Aſſiſe againſt them, for they are as ſeverall bodies, *viz.* a body politick, and a body naturall, 8 *H.*6.1. and 14.

If a Citizen be diſſeiſed, and the Mayor and Commonalty releaſe to the Diſſeiſor all their right, it ſhall not bind the diſſeiſee, ſo if the Mayor and Commonalty are diſſeiſed, and every one of them will releaſe by their proper names, it is nothing worth, 19 *H.*6.64. by *Martin*, in the Rector of *Edingtons* caſe.

If an Abbot and all his Monks by their proper names, and not by the name of their corporation, make an Obligation under their Covent ſeal, it ſhall not bind the Succeſſor, becauſe the Covent is not named by the name of the Covent, the ſame Law of Mayor and Commonalty, 15 *Edw.*4.1.

The Maſter and his Confreeres cannot preſent the Maſter to a benefice, for he is the Head and cannot preſent himſelf, ſo they cannot enfeoff the Maſter and make a Letter of Attorney to make Livery and Seiſin to him, but the Maſter and his confreeres may give to one of his Confreeres, or the Dean and Chapter may give to one of the Chapters, for there is a perfect corporation without him that takes, For *Major pars tota eſt.*

Alſo it is there holden, That one may give Land to *J. S.* Dean and his Succeſſors, and to *J.S.* clark and his heirs, and he ſhall be Tenant in common with himſelf: ſo of a Rent, ſo where he hath a Signiory, as Dean, and he purchaſeth the Tenancy, as *I.S.* he ſhall hold of himſelf 14 *H.*8. 2. and 29.

An Obligation made by the Mayor and Commonalty, to the Mayor, is worth nothing, 21 *Edw.*4. by *Vavaſour*, *Bract.Corporations* 63.

I,S. Maſter of the Fraternity of *B.* and his Confreeres, granted, *Quendam annualem redditum* to *B.ſolvend.* &c. *in cujus rei teſtimonium predict. Iohannes*: Maſter and his five Confreeres to this deed, have put the common ſeal, *et etiam predict.I.S.Sigillum ſuum appoſuit*, and it was holden becauſe there were no words in the premiſſes of the Deed to bind him, that he ſhould not be bound as a private perſon, 10 *H.*7.16. 14.H.H.17.

XII. *Where change of a corporation ſhall not alter the charge.*

IT was agreed, That where a Corporation is by name of Commonalty and after it is changed into Bailiffs by another grant, yet by this change they ſhall not be diſcharged of Covenants or annuity, *&c.* to which they were bounden before, and by the ſame reaſon they ſhall retain and keep the Lands and Poſſeſſions which they had before, 2 H.6.9. And for proof thereof, note, it is holden in 14 H.6.12. that where there are bailiffs of a town who have liberties by the grant of the King, and afterward the King by another Charter make them Sheriffs, yet their franchiſes and liberties remain, 39 H:6:13. and 14.

But although the charge did remain, yet it is to be conſidered how it ſhall be demanded, whether by the ancient name or by the new name, for which ſee 39 H.6.13. and 14.

If a man doth recover againſt a Vicar an annuity, and before Execution be had of the Recovery, the Vicaridge is united to the Parſonage, yet the Plaintiff ſhall have execution againſt the Parſon as Parſon, and where Bailiffs are made Mayor and Commonalty, yet my action ſhall be againſt them by the name of the new Corporation, 26 *E.*4: 6: and the Writ ſhall not contain the ſpeciall matter, but he may help himſelf by the Declaration.

So if Treſpaſs be brought againſt an Abbot where he was called Prior at the firſt foundation, yet the Writ is good, and note the Defendant did plead in bar a feoffment made to a Prior of the ſame place, and that afterwards he was tranſlated into an Abby, and that the ſaid Abbot and his Succeſſors had been ſeiſed afterwards, and he was forced to ſhew by what authority he was made Abbot, for which he pleaded at large, that the Pope gave authority to the Biſhop of *S.* to make it an Abby, 7 *Edw.* 4. 32.

And note, that when a Corporation is to demand an annuity or other thing as by a new name, where he had another name before, the manner is to ſhew the preſcription in the other Corporation, and then to ſet forth that in ſuch a time of ſuch a King, the Corporation was changed, and in the name of the Corporation, and that he who was then the Head of the Corporation and his Succeſſors after that have been ſeiſed of the thing in demand, and that appeareth by 22 *E*:4:44: 7 *E*:4:32: 39 H:6:13 and 11 H:6:18. and 19.

XIII. *Where*

XIII. *Where no ability ſhall be adjudged in a Corporation.*

NOnage in the Mayor is no plea, by *Sulliard*, 21 *E.*4.7. ſo *Dureſſe*, or *Manaſſe* or *Non ſana memoria*, is no plea by *Townſend*.

A Corporation cannot be beaten in their Politick body, but in their naturall body, ſo a corporation cannot beat others, nor commit Treaſon or Felony as a Corporation, and a corporation ſhall not be impriſoned for denying their Deed, nor for a diſſeiſin done with force, nor ſhall be forjudged the Realm, by *Pigot*: Outlawry, or encouragement is no plea againſt them, nor in the Mayor, by *Nele*; *Capias* in debt doth not lye againſt a Corporation, for they cannot be impriſoned; by *Choke*, Villainage in the Mayor is no plea, by *Sulliard*, but for impriſonment of the Mayor the caſe was this, An Abbot brought an action of Debt againſt the Mayor and Commonalty of *Norwich*, upon an Obligation, the Defendant pleaded, that the Plaintiff did impriſon the Mayor in the *Fleet*, untill he and the Commonalty made the Obligation by dureſſe: And *Brian* Juſtice held the plea to be a good plea, becauſe the impriſonment of the Head is the impriſonment of the whole body, and it was in a caſe which did concern his Office, for if the caſe be, that ſuch a Corporation ſhould chuſe the Mayor ſuch a day, *Sub pœna* of 20 *l.* and the Mayor is then impriſoned, for which cauſe they looſe the 20 *l.* the Corporation ſhall have falſe impriſonment, ſo is it if the Corporation be bound to render an account in the *Exchequer* ſuch a day, at which day the Mayor is impriſoned. But *Sulliard* held, that for the impriſonment of the Mayor, the Corporation ſhould not have a Writ of falſe impriſonment: But it was agreed, That if it had been pleaded that ſo many men made the Corporation, and that ſuch and ſuch of them were impriſoned, then it had been a good plea, 21 *E.*4. 17.

XIV. *What Corporation cannot do a Treſpaſſe*, & e contra.

A Man ſhall have Treſpaſſe againſt the Mayor and Commonalty; but not againſt an Abbot or Covent, 15 *E.*4. 1. *Per curiam*, *vi.*32 *H.*6. 8 contrary of a Parſon,

Treſpaſſe doth not lie againſt the Prior of Saint *Johns* of *Jeruſalem* in his Corporate capacity, but againſt him by his name of Baptiſme it will lie, 39 *E.*3.13.

But ſee *Thorp* 22 *Aſſ.* 67. That Treſpaſſe doth not lie againſt Commonalty, but againſt the perſons which do the Treſpaſſe by their proper names.

So

So it is holden, 21 *E.*4.17. by *Pigot*, that a corporation cannot make a Battery or commit Felony, or Treaſon, and ſo ſee a corporation cannot make a Diſſeiſin, if not that one enter to their uſe by a writing under their covent and common Seal, 14 *H.*8.

A Biſhop having a term for years made a Leaſe for life, it was holden that he had the rendition in the right of his Church by wrong, 7 *E.*3.11. *Iſſue* 7. *vide* 50 *E.* 3. contrary.

XV. *What words in the Kings grant ſhall be good and ſufficient to make a* Corporation.

THe King giveth Land in Fee-Farm *probis hominibus villæ de B.* the ſame is a good corporation: the ſame Law where it is given *Burgenſibus, Civibus & Communitati*, and they by ſuch name may have an Action of ſuch things which do concern their Farm, and the Writ ſhall be *ad reſpondend. probis hominibus* &c. 7 *E.* 4. 14. *vide* 1 *Ma. Dyer* 100 *acc.*

If the King grant *probis hominibus de D. heredibus & ſucceſſoribus ſuis*, the Mannor of *D.* rendring Rent, they are incorporated for all things which do concern that Mannor, but if he grant *probis hominibus de* D. that they ſhall be quit of Toll, it is a void grant if they were not incorporate before, but note that *Bryan* ſaid, that it is a good Corporation to this purpoſe, but not to purchaſe, 21 *E.*4.55,56. *vide* 1 *Ma. Dyer acc.* But the principall caſe there was, that *Norwich* was incorporate by the name of citizens and comminalty, and in the ſame charter the King did afterwards grant *Civibus prædict. de Norwich*, that they ſhould not be put on Juries, and afterwards it was enacted by Parliament, that all grants made *Civibus &c.* ſhould be good, See and if the ſecond grant ſhould be void or *nul* was the queſtion, for if it were void, then *nihil operatur* by the Act of Parliament, but ſome were of opinion that the grant ſhould be good *Civibus*, and for that purpoſe they were a corporation, and every one of them at their pleaſure ſhould take benefit of the grant by *Nele* and *Chock* Juſtices, and by them it was holden, that if the King grant *Inhabitantibus de D.* that they may chooſe a Mayor, and that then they ſhall be impleaded by the name of Mayor and comminalty of *D.* now *Inhabitantibus* is gone, and yet they were a good Corporation to take by force of the firſt grant, and note that in all the ancient Cities and Burroughs in *England*, as *London* &c. the grant is *Civibus & Burgenſibus de* L. which was not a Corporation before, and yet good, but perhaps the reaſon hereof is, becauſe theſe ancient Cities and Burroughs are favoured, *vide* 21 E 4. 55,56. but ſee *Keble* 3 *H.*7. 13. that if the King grant to a Corporation, which is no Corporation; or to an alien born, or to a man outlawed, the grant is void.

Note that the creation of a man a Duke, and the giving of him Lands for

for the maintenance of the Dignity by the ſame Patent is good: and ſo it is of creating of a Corporation, and giving of Land to them by the ſame Patent, 2 *E.* 6.84.*Br.*

If the King grant to a Corporation to purchaſe or give or grant by the name of Maſter and Wardens; Brothers and Siſters, and by the ſame Patent alſo grants them to plead and be impleaded by the name of Maſter and Wardens onely, the ſame is good ſo to incorporate them, as to purchaſe to be Bailiffs, and to implead by the name of Mayor, it is good, 11 *H.* 7.27.*vide Librum.*

XVI. *What proceſſe ſhall be awarded againſt a Corporation.*

PRoceſſe of Outlawry doth not lie againſt a Corporation, as *Capias & Exigent*, but Diſtreſſe againſt them, 45 *E.* 3.2. & 3.39 *E.* 3.13.*acc.* againſt the Prior of Saint *Johns* of *Jeruſalem* in *England*, *vide* 22 *Aſſ.* 67. by *Thorp*, 21 *E.* 4.27.*and* 67.

XVII. *Where one corporation may make another corporation, where not.*

ONE Corporation cannot make another Corporation by uſage or Preſcription, but only by ſpecialty, words of the King, ſo to do by the Kings Grant, and upon ſuch a grant, the Abbot of *Weſtminſter*, and the Prior of *Weſtminſter* are ſevered, for a Corporation cannot be divided, but by grant of the King, and the King may grant Lands to the Queen to hold by her ſelf, or in common with the King, *vide* 49 *Aſſ.* 8. and the ſame alſo appeareth in 49 *E.* 3.3. & 4. that *London* cannot make a Corporation nor a Commonalty, nor can be a Corporation by Preſcription, for that is onely at the will and pleaſure of the King, ſo they cannot make Laws to bind the inheritance of any man.

XVIII. CAPACITIES.

IF a Monk purchaſe it is void, 11 *H.* 4.26.

If an Abbot purchaſe to him and his heirs, it is but for life, *contra* of a Biſhop, Dean and Chapter, 9 *H.* 6.9.

If a Maſter of an Hoſpitall dieth, his ſucceſſor ſhall have the arrearages, and

and not his Executors, which proves that he cannot as Maſter make a Will, contrary of a Parſon, 19 *H.*6.44.

A Monk is capable alone of the Grant of the King, where there is a Rent reſerved, 14 *H* 4.10. and a Monk and Channon are capable of ſpirituall things, as to be made Executors &c. or Vicar &c. 3 *H.*6.23.

A Prieſt, a Chaplain was Eſcheator, *Fitz.N.B.*225 *C.*

If an Abbot hath money given utno him to pray for ſouls, he hath it not in Right of his houſe, for if he ſpend the money, it is no cauſe of Deprivation of him, 9 *E.*4.34. by *Moyl*.

XIX. *Where a gift to Pariſhioners is good, where not.*

IF a Feoffment be made to the uſe of the Pariſhioners of *C.* they are not a Corporation to ſuch a purpoſe as to take Lands, but contrary of perſonall things, 12 *H.*7.27. and that appeareth by the caſe of 8 *E.* 4. 8. Where Treſpaſſe was brought by the Churchwardens for a book taken *ad damnum Parochianorum*, and the Writ did lie, *vide* 37.*H.*6.10. the caſe of the Geaile.

If an Obligation be made to the Church-Wardens and their ſucceſſors, it is void, 20 *E* 4.2. by *Bryan*. So a Deviſe of Lands to Pariſhioners is void, but *contra* of Chattells, 37 *H.*6.30.

Treſpaſſe was brought by the Church-Wardens againſt the Parſon of the Pariſh, for the breaking of the Bells which were in their cuſtodies, and it was holden good, 11 *H.*4.12. So the Church-Wardens ſhall have an appeal or an accompt of the goods of the Church, 12 *H.*7.27.

*Vide Plow.Com.*242. That the King is a Corporation at the common Law, and was purchaſer in Succeſſion by the words (heirs).

Where the Head of a Corporation may gain a Freehold by Diſſeiſin.

A Biſhop having a Term for years made a Leaſe for life, and it was holden that he had the Reverſion in the right of his Biſhoprick, and not in his own right, 7 *E* 3.11. *iſſue* 7.

If a Biſhop doth preſent to a Church twice, where he ought not to preſent, and dieth, it ſeemed in that caſe, that the Succeſſor had gained the Patronage by the book of 47 E.3.10. for in that caſe the King claimed it as for Mortmain, *quod nota.*

Where a Biſhop diſſeiſed one, and afterwards made a Leaſe for years, according to the Statute of 1 *Eliz.* It was holden in a Reading, that it was

was a good Leaſe which proves that he had gained the Lands in the right of his Corporate Capacity.

See 44 *Aſſ. Br. Preſcription* 54. the Prior of Caſe, where a corporation was by Preſcription.

And ſee thatthe Bailiffs and Commonalty of *Godmancheſter* were alledged to be a Corporation by preſcription, 2 *H* 7. 17. the Prior of *Huntingtons* Caſe.

COSTS.

I. *Where a Bill in the Chancery is adjudged.*

WHere a Bill in the Chancery is adjudged inſufficient upon a Demurrer, and yet there no Coſts, for the Statute gave dammages upon the ſuggeſtion found falſe, and the verity in that caſe came not in queſtion, 7 *E.*4 14.

Note, that where an action of Debt is grounded upon a penall Law, there the Plaintiff ſhall not have Coſts nor dammages, 35 *H.*6.58. and by the Statute of 24 *H.*8.*cap* 8. The Plaintiff to the uſe of the King, although he be non ſuit, or a Verdict paſſeth againſt him, yet he ſhall not pay Coſts, yet by the Statute of 23 *H.*8.*cap.*16. Every other Plaintiff if he ſueth not *in forma pauperis*, if he be non ſuit, or the Verdict paſſeth againſt him, Dammages and Coſts ſhall be recovered againſt him, and by the Statute of 8 *Eliz.cap.*2. if he doth not put in his Declaration within three dayes, or doth not proſecute with effect, he ſhall pay Coſts at the Diſcretion of the Juſtices.

Note, no Coſts are to be paid, where the Judgement is upon Confeſſion, 33 *H.*6..13. by *Priſot.*

II. *In what Actions Coſts ſhall be and where, and where they ſhall be trebled as well as dammages.*

NOte, that by the Statute of *Gloceſter*, *cap.*1. It is declared that in all Caſes where dammages ſhall be recovered, that in thoſe Caſes the

plaintiff ſhall recover his coſts of ſuit, 37 H.6.10. and dammages are to be recovered, where a man bringeth an action againſt one for his own deed, and recovereth by the ſaid Statute, but that ſeems to be in ſuch actions where damages are not given by the Statute, and eſpecially in ſuch Actions in which high damages are given by the Statute, as in a *Quare impedit*, there no Coſts ſhall be, becauſe the damages are ſo high, and that by the opinion of all the Juſtices, 27 H.6.10. and 9 H.6.32. 27 H.8.2. by *Spilman*, but yet at the Common Law Coſts were given in a *Quare impedit*, but that was before the Statute of *Weſt.* 2.*cap.*5. The ſame Law in a *Decies tantum*, 27 H.6.10. but it ſeems Coſts have been given in a Raviſhment of Ward, and yet Damages are given by the Statute.

And note, a man ſhall not recover Coſts in Waſt, by 9 H.6.60. the reaſon is, becauſe ſuch great Damages are given by the Statute, and yet in 5 H.7.13. the contrary is holden, that there ſhall be coſts, but the coſts ſhall not be trebble as the damages are, yet *Brook* makes a marvell at it, that any coſts ſhould be, and by the whole Court, 2 H.4 17. That where the Statute giveth Dammages, that there ſhall not be any inquiry of other damages: So that the Juſtices of the Kings Bench conceived that Coſts in Waſt ſhould be trebled according to the rate of the damages, 5 E.4.7. and not according to the rate of the Waſt taxed.

See 19 H.6.32. that in Waſte no coſts, but in an action of forcible Entry, there the coſts ſhall be trebled, and *Paſton* gave the reaſon to be, becauſe that the Statute of forcible Entry giveth them. And for trebble Coſts in a forcible Entry. See 22 H.6.57. yet ſee 14 H.6.13 that the coſts in a forcible Entry were not trebble, but onely the damages.

In 12 E.4.1. In an Aſſiſe againſt two, one was found guilty, as to part with force, and the other guilty as to another part, but not with force, and as to him who was found guilty with force, the coſts and damages were trebble, *quod nota.*

Coſts may be taxed and aſſeſſed by a Forrein Jury, but contrary of damages, 33 H. 6. 55. and note, that coſts are alwayes taxed intirely.

COVER-

COVERTURE AND INFANCY.

What Acts of an Infant are void, and what voidable.

THE Grant of Common, Tithes, or other things, which lie meerly in Grant are void, although that a Rent be reſerved upon ſuch grant, *vide Perkins* 3 *acc.*

An infant brought an action of vvaſt againſt his guardian by Attorney, & the defendant ſhewed to the court, *viz.* that the Infant was within age, and yet he was compelled to anſwer over, becauſe the Action lieth as well by him within age, as of full age, but by *Perſhay*, if an Infant bring an action anceſtrell, by Attorney, if the Defendant doth alledge that he is within age, the Attorney ſhall cauſe him to be brought into Court to be viewed, and if he be within age the Warrant of the the Attorney ſhall be diſallowed, to which *Paſton* agreed, 48 *E.*3.10. and by 22 *H.*6.31. where an Infant is permitted to make an Attorney, which is recorded there the party cannot plead the ſame in arreſt of judgement, but is put to his Writ of Error.

But it is holden 1 *H.*5.6. that an Infant ſhall not make an Attorney, nor be an Attorney, but that is to be intended, an Attorney to ſue in a Court of Record, for he may be Attorney to deliver ſeiſin, 21 *E.*4.18.

Infant accomptable, & e contra.

NOte clearly by *Newton*, that an account doth not lie againſt an Infant, 19 *H.*6.5.

Accompt doth not lie againſt an Infant of a receipt during his nonage, 21 *E.*3.7, & 8.

But if an Infant enter into an accompt before Auditors, he ſhall be

charged in debt upon the arrerages of the account, by *Newton*, 10 *H.6.* 14: but that an infant ſhall not be charged in account neither as Receivor nor otherwiſe, ſee 23 *E.3. Fitzh. Infant* 19. and *ibidem* 11. 27 *E.3. adjudge acc.*

In 16 *E.3. Account* 52. account was brought againſt two; one ſayd, that at the time of the receit and yet hee is within age, and hee was forced to hold himſelf to one of the pleas, wherefore he ſayd he was within age at the time of the receit ſuppoſed.

Where Acts of an Infant are void, where not.

IF an Infant procureth one to be ſworn and impannelled, the procurement is voyd, 27 *Aſſ.* 45.

P. 4, Jac. in B. R. An infant did acknowledge a Statute and during his nonage, brought an Audita querela, *and had judgment: at the full age of the infant, the Comiſſee reverſed the judgment given in the* Audita querela, *and the infant being within age prayed a new* Audita querela, *which was denyed by the whole Court,*

A Statute Staple, Fine, nor a Deed enrolled, ſhall not be accepted from an Infant, 32 *H.* 8. but if he be bound, he ſhall avoid it at his full age, or within age, by *Audita querela*, *F.N.B.* 104. and ſo is 15 *E.4.* 5. by *Brian*, and 20 *E.4. Audita querela* 27. But *Quere*, for it was holden in the Common Pleas, 20 *Eliz.* that at full age he ſhould not have *Audita querela.*

An Infant ſhall not wage his Law, although he be an Executor, 11 H.6. 40. and ſee *Lit.* 57. That an infant ſhall not be a Juror.

An Infant ſhall not be bounden in a Recognizance as main-pernor, becauſe he hath no means to avoid it, 8 *H.6.* 30. So of a Statute by 48 *E.* 3: 33. *Bolknapp*

An Obligation, Warranty, Defeaſance of an Infant are good untill they be avoided by plea, contrary of a feme Covert, 48 *E.3.* 12. 14 *H.* 4. 30. and 33. 37 *H.6.* 31:

If an Infant doth aſſigne more to his mother for her Dower then he ought to do. *Quere*, whether he ſhall enter into the Surpluſage, *Read* held that he ſhould, as in the caſe of *Penſhion*, *Kingſmill* contrary, 21 *H* 7. 21.

An Infant commanded his Tenants to put in their cattell into his Common, it was holden a good ſeiſin, 45 *E.3.* 25. becauſe it was to do a lawfull thing which was for his benefit.

An infant commanded one to do a diſſeiſin, who did it, and it was enquired of if the infant was there, and it was holden, that becauſe he was there, that he ſhould be acquitted, 12 *Aſſ.* 30 *Aſſ.* 200. 2 *Aſſ. Bra. Diſſeiſin* 16.

Two infants joyntenants, the one doth releaſe to the other who entreth, it is a diſſeiſin, *vi* 7. *Aſſ.* 10. *Br. Diſſeiſin* 19.

C. 2. *part* 59. If an infant levieth a Fine, and declares the uſe of it, it ſhall bind him ſo long as the Fine remaineth in force

An Infant ſhall be bounden by a recovery in a *Ceſſavit*, 31 *Ed.* 3. *Per quæ ſervitia* 8. *Doctor and Student*, 113. *acc.*

Partition ſhall bind an infant if it be equall, 21 *H.7:* 29: *What*

What Statutes ſhall bind Infants, what not.

IF an infant be Guardian of a Priſon and ſuffereth an eſcape, he ſhall be ſubiect to the eſcape, *Doctor and Student*, and 36 *E.* 3. and there it is holden, that a Statute which giveth corporall puniſhment ſhall not extend to infants, contrary of other Statutes, if they be not excepted.

An Infant of twelve years of age is to be compelled to ſerve in husbandry, *F.N.B.* 190.

An Infant brought an attaint, and the firſt verdict, and thereupon the infant was awarded to priſon, 30 *Aſſ.* 18. 4 *E.* 3. 34. and ſo note there: that an infant was within a Statute which gave corporall puniſhment, *vi.* 41 *E.* 3. *Impriſonment* 17.

If an infant be found a Diſſeiſor, yet the fine and impriſonment ſhall be remitted, 43 *Aſ.* 45: 26 *Aſ.* 17. 24 *Aſſ.* 14 43 *E.* 3. *impriſonment* 16.

The Stat: of Non-claim ſhall not bind an Infant, 2 *Aſ.* 6. *B. Age* 32: but if parcell of the year be in the time of the Anceſtor, now if the heir within age doth not enter within that year he ſhall be barred, by *Dy*: Pl: Co. 371.

If an Infant be convicted of raviſhment of Ward, he ſhall not be impriſoned for the fine to the King, yet the ſtatute of *Merton* is generall, *viz.* *Quod quicunque laicus, qui inde convictus fuerit.* Pl: Co: 364 by *Walſh.*

If a woman Infant conſent to a Raviſher, yet the next of kindred ſhall not enter, yet the Statute is generall, *Si duæ filiæ & aliæ mulieres conſenſerint*, but the ſame is to be underſtood if ſhee conſent before twelve years, for after theſe years if ſhee do conſent, *Proximus hæres intrabit.*

An infant is within the Statute of waſt, for waſt done by himſelf, but not for waſt done by a ſtranger, *Plow: Com* 364.

An infant is within the ſtat. of *ceſſavit*, becauſe it is a thing injurious to the Lord, & the Leſſor, *Com:* 364: & 2: *M. Dyer* 104. & ſee there, that an infant is bound by every Statute Law, if he be not particularly excepted.

The Monſuit of an infant in a *Quare impedit* ſhall binde him, 5 *E.* 2: 10 *voucher*, & 1. & 2. *Mar. Dyer*, 104. *acc:*

Confeſſion of an Infant.

IN a *quia juris clamat* by an infant, he cannot confeſs that a leaſe was made for term of life without impeachment of waſt, but ſhall ſtay till he come of full age, 43 *E*: 3: 5: 45 *E*: 3: 33:

In an Aſſ: it was agreed that where an infant is Plaintiff, nothing ſhall be ſaid to be confeſſed by him, but the aſſiſe ſhall be at large, although that he tender a ſpeciall iſſue, 44 *E.* 3. 10:

See 48: *E*: 3: 34: where the difference is taken, were the infant is demandant, and where he is tenant, & there it is ſaid, that no judgment upon a *nihil dicit* ſhal be againſt an infant where he is plaintif, contrary where he is Tenant or Defendant.

If an Infant in an Aſſ: plead, that never lawfully coupled in matrimony, &

the

ſame be certified againſt him, yet the Aſſiſe ſhall be awarded in point of the Aſſiſe, for hee ſhall not be counted as Diſſeiſor by his plea, but contrary by verdict, *&c.* 28 *Aſſiſe* 52. 4 *E.* 3. 31.

In an Aſſiſe by a Guardian, the infant came and would have diſavowed his ſuit, and was not ſuffered, for that ſhould be a *Detraxit.* 33 *Aſſiſe* 3.

An Infant was vouched, and anſwered to the Action, and it was admitted, and he bound to warranty 13 *E.* 3. *voucher* 12. alſo an infant did confeſs a plea in a Formedon, which abated the Writ, and admitted, 3 *E.* 3: *Enfant*, 14. 41 *E.* 3. 21. *contra.*

In a *Precipe* againſt an Infant, he would have confeſſed the action, but the Court would not ſuffer him, 9 *E.* 4. 34.

An Infant who is in by purchaſe, ſhall be compelled to attorn in a *Per quæ ſervitia*, and he ſhall be bound by his own confeſſion, or not denying: He ſhall joyne the Miſe in a Writ of right, and the Lord ſhall avow upon him by his tender of the ſervices, 32 *E.* 3. *Age* 80.

C. 10 *part.* in *Coupes* caſe, In a *Per quæ ſervitia*, againſt an Infant who hath the Tenancy by diſcent, he ſhall not have his age, but he ſhall be compelled to attorn, becauſe attornment is only to perfect a grant which the law favours.

In a Writ of meſne, the plea ſhall not ſtay for the nonage of the Plaintiff, becauſe his Nonage ſhall not priviledge him from the payment of his rent, and therefore the Law giveth him remedy during his Nonage to have acquittance, 7 *E.* 2, *Age* 140.

Per quæ ſervitia, was brought againſt the heir of him who was Tenant, the day of the fine levied, and he was forced to confeſſe by what ſervices the lands were holden, 31 *E.* 3. *Per quæ ſervitia* 81. So in a *Ceſſavit* againſt an Infant, he ought to confeſſe the ſervices, and tender the arrearages, and ſo in a Writ of cuſtomes and Services, by *Thorpe* Juſtice.

Default, or Non-ſuit of an Infant.

AN Infant made default in a *Precipe quod reddat*, for which a grand *Cape* is awarded, he ſhall not looſe his Land by his default by reaſon of his infancy, 3 *H.* 6. 10. 1. and 2 *Ma. Dyer*, 104.

If an Infant be non-ſuit in a Writ of Right, yet he may afterwards have a writ of poſſeſſion, and if he pray to be received, and ſheweth cauſe, he may afterwards ſhew other cauſe, 42 *Ed.* 3. 13. by *Finchden.*

An Infant brought Detinue of a hundred Charters, and Minuments, and the Defendant brought the Deeds in Court, and becauſe the infant ought to declare how much was contained in every Charter, which he could not do, therefore he was non-ſuit, and brought a new Writ of Detinue

Detinue of a Cheſt locked, and Charters contained in it.

Note, An Infant ſhall be puniſhed for a Contempt, becauſe *Fruſtra in legis auxiliari invocat, qui in legem committat*, 2 *H.*5. Outlawry lyeth againſt an Infant if hee exceed fourteen yeares, 2 *Mar. Dyer* 104. *acc.* if he make default after the Miſe joyned, in a Writ of Right, Judgment finall ſhall be given againſt him, 9 *E.*4. 36. 3. *H.*6. 16. he ſhall anſwer the breach of a Prohibition, in a Writ of Eſtrepment, 3 *H.*7. 2. he ſhall anſwer for a felony, *Quia malitia ſupplet ætatem.* 5 *E.* 3. An Infant Plaintiff in an Aſſiſe ſhall be aſſiſted by the Court in his pleading, and in making his title: *M.* 32. *Eliz.* It was holden *Per curiam in Co. B.* after appearance he ſhall ſave his default, not otherwiſe, but *Quare* of of that caſe, for Mr. *Plowden* conceived the Law to be otherwiſe, for then, one ſhall never recover againſt an Infant during his infancy, ſee where an Infant ſhall ſave his default, where not, 6 *H.*8 *Br.* ſaves default, 50. 7 *E.* 3. ſaves default, 52. 75 7 *E.* 3. 47. ſaves default, 13. & 2. *M. Dyer* 12. 104. 7 *H.*4. 91. & 21 *H.*4 an infant ſhall anſwer to all matters of Record which are pleaded againſt him.

Where an Infant ſhall not be bounden by recovery had againſt him during his Nonage, nor by a verdict, which paſſeth againſt him.

SEE 13 *E.*1. *Fitzh. Infant* 16. It is ſaid by *Mitton* Juſtice, If a man demands the wardſhip of an Infant, and the ſeiſin of Homage is counter-pleaded, which paſſeth for the Lord, & the Infant bringeth an attaint, in which the firſt Judgment is affirmed, and afterwards the Lord doth diſtrain for eſcuage, being granted, yet the infant ſhall not be eſtopped by the judgment or recovery, ſo if an Aſſiſe of *Mortdanceſter* paſſeth againſt an infant by default when he is within age, yet he ſhall not be barred thereby, but may bring a new action when he cometh of full age.

In an Aſſiſe, the Tenant pleaded a recovery by himſelf, in an Aſſiſe againſt the Demandant, the Demandant ſaid, That at that time he was within age, and that *J: S:* was Tenant of the Land, of the leaſe of his Father, and that the Reverſion was in him by diſcent from his Father, and it was holden a good plea, and that the Aſſiſe was well brought, notwithſtanding the recovery pleaded againſt him, 26 *aſſ.* 6. *aſſ.* 25. 20 *E.* 3, *Quare non admiſit* 9. It appeareth that the Husband and Wife brought a *Quare impedit* againſt the Diſſeiſor of the Defendant, and others, and had judgment to recover, and damages by the Statute, becauſe the ſix moneths were paſt. Afterwards the Husband dyed, the Wife within age: And afterwards ſhee brought *Quare non admiſit* againſt the ſucceſſor, and counted that the Church was full, and continued full during the time of the Predeceſſor, and in time of

the

the Defendant, untill the Incumbent did reſign, and the Defendant pleaded the firſt recoverie to have eſtopped the Plaintiff, for to ſay that the Church was alwayes full, and it was holden no eſtoppell, becauſe ſhe was within age.

In 18 *E.*3. 29. *Dower* 61. In Dower the Defendant ſaid that her husband was ſeiſed of three Mannors, and holden of the King in *Capite*, and afterwards the Plaintiff brought a Writ of Dower, and had one Mannor aſſigned to her for all the others, being of equal value by the Return of the extent; The plaintiff ſaid, that ſhe was within age at that time, yet it was holden that the Aſſignment ſhall bind her, being made in the Court of Chancery.

See 7 *H.*4.22. Where in a *Scire facias* to have Execution of a Fine, the Defendant pleaded a recovery in Aſſiſe againſt the now Plaintiff, where the now plaintiff brought an Aſſiſe, and upon a ſpeciall Verdict found for the now Defendant, and becauſe there was a divorce in the caſe, which was not given in Evidence at the Aſſiſe, and alſo becauſe they could not find it, being matter of Record, and not matter of fact: therefore the now Plaintiff being then an Infant, had Judgement to have Execu-
*Vid.*7.*H.*4.23*e* tion. Note, that *Brook* in abridging of the Caſe makes a marvell at it, becauſe a ſpeciall verdict ſhall bind an Infant as well as a man of full age, the Verdict continuing ſtill in force. So *Scire facias* 65

What things an Infant in his mothers belly ſhall have.

IN Dower the Defendant pleaded that the Plaintiff did detain from him certain Charters concerning the ſame Land, the Plaintiff ſaid that ſhe was with child by her husband, and it was holden that in reſpect that the Iſſue which he might have, might have the Lands, and ſo the Charter which did concern them, that ſhe might keep the Charters, and in that caſe it was ſaid, that the Iſſue in his mothers belly might be vouched, 41 *E.*3. 11 *See* 31 *E.*2. *Fitz. Brief* 871. for the Voucher.

One vouched an Infant in his Mothers belly, if God ſhall give him to be born, and if not, then *W* the next heir, in a Writ of Dower, and good, without ſhewing a deed to ſhew the binding to warranty, contrary if the Infant had been born at the time, 11 *E.*3. *voucher* 13. *vide* 18 *E.* 3. *voucher* 58. and ſee there Tenant in Tail of the gift of a Biſhop vouched him who ſhould be the next Biſhop, the Biſhoprick being then void, and the Temporalties being in the Kings hand.

See that now that ſuch a Deviſe to an Infant is void by the Statute of 32 *and* 34 *H.*8 *adjudge acc.*21 *J.* in the Exchequer chamber, *Sheffields Caſe.*

Note, it is holden in 8 *E.*2. *voucher* 237. That when one is vouched in his mothers belly, that the party of neceſſity muſt vouch another perſon with him.

A Deviſe to one in his Mothes belly is good by 9 *H.*6.23. 11 H.6.13. by *Babington*, *vide C.*9. *part* 9. *acc.* but ſee 14 *Eliz. Dyer* 304. that ſuch a

Deviſe

Deviſe is void by all the Juſtices, for here the Caſe was, a man deviſed two parts of his Lands to his four ſons in Tail, and if the Infant in the mothers belly be a ſon, that he ſhall have a fifth part as coheir with the other four ſons, and if the fifth dieth without iſſue &c. and it was holden by *Sanders, Dyer, Bendloes & Mead*, that the Infant in his mothers belly took nothing, becauſe he was not capable when the deviſe ſhould have effect by the death of the Deviſor, but ſee, 11 *E.*6.13. that by Cuſtome ſuch deviſe may be good.

Where an Infant may waive a demurrer, or voucher, and plead in barr &c contra.

IF an Infant do demur in Law, he may waive his demurrer afterwards, and plead to iſſue when he pleaſeth, 31 *E.* 3. *Infant* 7. *vide eſtoppel* 244. *acc.*

In an Aſſiſe brought againſt an infant, he pleaded an outlawry againſt the Demandant, and afterwards he waived that plea, and pleaded a releaſe, 14 *Aſſ.*15. *Aſſiſe* 203.

Dower brought againſt *R.* ſon of *W.* who appeared and vouched *W.* Proceſſe continued till the Sheriff returned, *W.* dead, for which the Defendant came and pleaded, that he had not any thing in the Lands, but jointly with *A.* and demanded Judgement of the Writ, and it was holden that although he was within age, yet he could replead, for when the voucher was granted, it was as ſtrong as a judgement, which ſhall bind as well infants as men of full age, 18 *E.*9.6. *voucher* 3. *acc*

But if an infant doth pray to be received, and ſhevvs cauſe, he may afterwards vvaive that cauſe, and ſhevv another cauſe, 31 E. 3. 13. by *Finchden.*

If a vvoman infant doth accept of for &c. Dovver in Chancery of one Mannor, ſhe ſhall be barred by ſuch acceptance, 18 E.3. Dovver 61. *Dower.*

If an infant Leſſee for life, doth levy a Fine, or alieneth, he in the Reverſion may enter, 18 E. 2. *Fine* 120, *Quære* if he may not avoid it after, and be in of his former eſtate. *Fine.*

A Fine ſhall bind an infant if he do not reverſe it during his nonage, 21 E.3.24. but if an infant levieth a Fine at this day, and Proclamation paſſe, he ſhall not avoid it by Error, *Plo.Com.*370. by *Catlyn.* *Fine.*

An Infant vouched in a Writ of Dower, vouched over *J.S.* who was returned dead, the Infant could not afterwards plead jointenancy with another becauſe he had vouched before, 18 *E.*3. *voucher* 3. *Voucher.*

If a recovery or a Fine be pleaded againſt an Infant without any poſſeſſion in him, yet it ſhall bind him, 24 *E.*3.64. *Recovery.*

If the Iſſue Tenant in Tail being an Infant, entereth into the Land ta-

Exchange. ken in exchange, it ſhall not bind him if he doth not agree to the exchange
11 H. 4. 12. C. Lit. 51. at his full age, 3 *E.* 3. *Formedon* 44.

Uſurpation. If an Infant purchaſe an Advowſon, and ſuffereth an uſurpation, he ſhall
Leaſe. not be helped by the Statute of *Weſt.* 2. for the Statute is *pro negligent. cuſtod.* which is to be intended of Infants by diſcent, 35 H. 6. 62.

If an Infant makes a Leaſe for years rendring Rent, and at full age ſays to the Leſſee, God give you joy, it makes the Leaſe good, by *Mead* 24 *Eliz.* 1.

Default. An Infant is not bounden to ſave his default, at the Grand Cape or Petit Cape, becauſe he never appeared, but if he once appear and make default at the Petit Cape, he muſt ſave his default, by the better opinion, *M.* 32 *Eliz.* in the Common Pleas

Aſſumpſit. An Infant and others were bounden for the Debt of the infant, the infant at full age promiſeth to ſave the other harmleſſe, the Infant dieth, adjudge that an action upon the Caſe lieth againſt his Executors upon this *Aſſumpſit*, but if a feme covert and another had been bounden at the requeſt of the wife, and the wife after the death of the husband, ſhe had promiſed to ſave the other harmleſſe, action did not lie againſther, *M.* 29 *Eliz.* *in B. R. Barton* and *Edmonds* Caſe.

Leaſes. If an Infant Prebend maketh a Leaſe for years, he ſhall not avoid it after. So of an infant made Biſhop by diſpenſation: And if a Prebend makes a Leaſe with warranty and dieth, and his ſon is choſen Prebend, the
Warranty warranty ſhall not bar him for theſe Lands, but if a Parſon within age makes a Leaſe for years, *Quære* if he ſhall avoid it. If a Prebend make a Leaſe by *Dureſſe*, he ſhall avoid it by *Brown* and *Catlyn*, but if the Biſhop enable him to be a Prebend, he ſhall not have *dum fuit infra atatem, per Curiam*, 1 *Eliz.*

Fine. Husband and wife Tenants for life, remainder to an infant, they joyn in a Fine, the Fine was reverſed, as to the infant, *Engliſhes* Caſe, *C* 1. *part* in *Bredons* Caſe.

Fine. *Worſley* and his wife levied a Fine to *Charnock*, of the Lands of the wife within age, and afterwards brought a Writ of Error to reverſe it, and whether the ſame ſhould be reverſed, as to the wife onely, and ſhould bind the husband during his life, was the queſtion, it was reſolved, although ſhe came of full age before the reverſall, yet becauſe ſhe was within age at the time of the Fine levied, the Fine ſhould be reverſed notvvithſtanding her full age: by the head, and it ſhould be reverſed as to them both, againſt the opinion of *Chandiſh*, 50 *E.* 3. 3. and a Preſident in 6 *H.* 8. where the husband and wife levied a Fine, the Husband died, ſhe took another husband, and they brought Error, and it was reverſed onely as to the Wife, but a Preſident in 2 *H.* 4. and 1 *H.* 6. was vouched, that the whole Fine ſhould be reverſed, as to them both, and ſo it was aftervvards adjudged in *Charnocks* Caſe, and *Worſley* had the Land again.

Declaration of uſes. It was adjudged in *Plowdens* Caſe, that an infant may declare the uſes of a Fine as well as a man of full age, *per Curiam.*

If

If a man layeth out money for an infant, for his meat, drink, and neceſſary apparrel, if he enter into a Bond within age to pay it, it is not good but voidable, ſo of *Aſſumpſit*. *Quere* for the differencce is taken when the *Aſſumpſit* is made within age, and when he comes of full age, for at full age if he make, promiſe, or enter into a Bond for neceſſaries taken in his nonage, it ſhall bind him as it was adjudged, *M.* 11. *Jac. in Co. B.* in *Cutters* Caſe, but ſee 44 *Eliz. Randalls* Caſe, adjudge that an Obligation with a penalty for money borrowed within age, is abſolutely void, and ſo it was adjudged, 5 *Jacobi*, in the Kings Bench, in *Bendloes* and *Hollydayes* Caſe.

An Infant Copy-holder made a Leaſe for years by word, not warranted by the Cuſtome, rendring Rent, and afterwards at full age he was admitted to the Copy-hold, and then accepted the Rent, *Quare* if the acceptance doth make the Leaſe good, it was not reſolved, It was *Trin.* 2 *Car.* in *B.R. Aſhfields* Caſe. *Leaſe. Acceptance of Rent.*

If an Action be brought againſt an infant, and he appears by Attorney where he ought to appear by Guardian or *Prochin amy*, and Judgement be given againſt him, yet it ſhall not bind him, but he may reverſe it by error, although the Warrant of Attorney be entred, but if no vvarrant of Attorney be entred, he may demurre, by 18 E. 3. and 14 *E.* 4. So was it adjudged in *Jones* and *Lewes* Caſe, 15 *Car. in B.R.*

An infant cannot be Stevvard of a Mannor in poſſeſſion or Reverſion, *C. Lit.* 3. *b.* *M.* 41 *Eliz. Scamblers caſe acc.*

An infant ſhall do homage but not Fealty, becauſe he cannot be ſvvorn, 21 E. 3. 40.

An infant heir of a Tenement in Socage in chief, vvithin the age of 14 years, at the death of the anceſtor ſhall not ſue Livery, nor pay prime ſeiſin, *C. Lit.* 77. 20 *Eliz. Dyer* 362. contrary if he be above 14 years, 18 *E.* 3. 26. *p.* 18.

A man hath ſix ages in Lavv, *viz.* 1. 12 years to be ſvvorn in a Leet; 2. 14 years to conſent to a marriage; 3. 15 years for the Lord to have aid; 4. vvithin 21 years to be in Ward for Land holden in Knights ſervice; 5. 14 years to be out of the Wardſhip of Guardian in Socage, 6. 21 years to alien his Lands, *C. Lit.* 78, 79.

An infant cannot be Guardian in Socage, becauſe a vvrit of accompt vvill not ly againſt him, 7 *E.* 3. 46. 31 *E* 3. *Infant* 9. but an infant heire in Socage after fourteen years may have accompt againſt his Guardian in Socage, 16 *Eliz.* in *Co. B.* adjudge, *acc.*

An Infant vvho holdeth of the King by Grand Sergeancy, ſhall do his ſervice by a Deputy of the Kings appointment, and ſhall not do it in perſon, *C. Lit.* 109 *acc.*

An infant brought a Writ of Error to reverſe a Fine, and had a *Scire facias* againſt the Conuſee, for vvhom a Protection vvas caſt upon inſpection of the infant by the Court, vvho adjudged him to be vvithin age, the Protection vvas diſallovved, and if the Plaintiff die, adjudged that the

heir ſhould reverſe the fine for the nonage of the anceſtor, contrary if he had died before he had been inſpected, *H.*12 *Jac.* in *B.R. Keckwiches* Caſe, *C. Lit* 131. *acc.*

If an infant who is a Ward entereth into Religion at the age of fourteenth years, Raviſhment of Ward lieth againſt the Soveraign of the houſe, but the Lord ſhall loſe the Wardſhip, becauſe the infant is *civiliter mortuus*, *C.Lit.*137.

If two coparcenors be, and one of them is within age, and they be Demandants, the Plea ſhall demurre and be ſtayed, for the nonage of the one againſt the other, *L. E.*1.*Age* 128. 44 *E.*3.*Age* 47.

All that which an infant is bound to do by the Law, ſhall bind him, although he do it without Deed, as an Obligation made by him for neceſſaries ſhall bind him, *C.* 9. *part Pinchies* Caſe, and things which he doth in the right of another ſhall bind him, as things which he doth as Executor to another. But a releaſe of an infant of a Debt as Executor, without an actuall payment, ſhall not bind him.

Vide 8.E.4.4. 2 *Ma.Dyer* 104

An infant Bailiffe within age ſhall not be charged in accompt, becauſe by interdict of Law he cannot have skill to make an improyement, 13 *E.*3. *Infant*, 9 10 *H.*4.14.*acc.*

Minor non poteſt minorem, but an infant ſhall not wage his Law of Notſummoned, becauſe he ſhall not be prejudiced by it; and an infant cannot wage his Law upon oath in Debt, *C.Lit.* 173.

13 *E.*3.*Ley* 50. 26 *E.*3.63.

If an infant maketh a Feoffment in Fee, a ſtranger of his own wrong cannot enter for the uſe of an infant, 39 *Eliz. in Co B.* adjudge, but if an infant be diſſeiſed, there an Entry by a ſtranger of his own wrong is good, and ſhall veſt the right preſently in the infant, 18 *H.*6.16. 26 *E.* 3. 62. by *Thorp.*

*C.Lit.*246. An infant ſhall not be bounden by a diſcent upon a diſſeiſin made by a ſtranger, but *Lacheſſe* ſhall barr an infant if he do not preſent within ſix months.

If an infant do not bring an appeal of the death of his anceſtor within a year and a day, he ſhall be barred for ever; and the priviledge of infancy ſhall not hold againſt the King, for if the King dieth ſeiſed, and the Land diſcendeth to his ſucceſſor, this diſcent ſhall bind an infant, 35 *H.*6.60.

35 *H.*6.41. *Plo. Com.* 236.

Lacheſſe of an infant or feme covert for not performance of a condition annexed to the Land ſhall bind them; but if a man maketh a Feoffment upon condition reſerving Rent, and if he do not pay the Rent vvithin a month, that the Rent ſhall be doubled, and the Feoffee dieth, his heir within age, vvho doth not pay the Rent, he ſhall loſe nothing by this *Lacheſſe*, by the Statute of *Merton cap.*5. vvhich is, *Non currit uſura contra aliquem infra atatem exiſtentem*, but yet it is holden, *C.Lit.*246. that the Statute doth not extend to a Condition of Reduction.

If an infant of 17 years of age releaſe a Debt, it is void, but if an infant make the Debtor his Executor, it is a good Releaſe in Law of the debt.

If a Leaſe be made to an infant for life, the remainder over to another in fee,

ſee, there, although the infant at full age doth diſagree to the Eſtate for life, yet his diſagreement ſhall not deveſt the remainder which was once veſted by good title, 17 *E.* 3. 38.

An Infant who is in by diſcent or purchaſe ſhall be compelled to attorn in a *Per quæ ſervitia*, or a *Quid juris clamat*, and if an Infant do attorn upon a grant by Deed, it is good, becauſe it is a lawfull Act, but hee cannot be compelled to attorn upon ſuch a grant by Deed, *C. 9 part* 84. *Conyes* caſe 4. *Mar*, *Dyer* 137

In a Writ of Meſne, the plea ſhall not ſtay for the nonage of the Plaintiff, becauſe his nonage ſhall not priviledge him for not payment of his rent, 7 *E.* 2. *Age* 140.

In a *Quid juris clamat*, brought by an Infant, if the Plea be ſtayd by reaſon of his nonage, the Infant when he cometh of age, ſhall have all advantages to have the arrerages of the Rent, or for waſt, as if the Tenant had attorned at the time of the Action brought, 43 *E.* 3. 5.

In a Writ of Cuſtomes and ſervices, or in a *Ceſſavit* againſt an infant, of his own ceſſer, although he comes to the Tenancy by diſcent, yet hee ſhall have his age, becauſe he doth not know what arrerages he ſhall tender before judgment, and becauſe, if he doth not make a true tender, he ſhall looſe his land, 2 *E.* 2. *Age.* 132. 9 *Edw.* 3. 10. 28 *Edw.* 3. 99. 3. *H.* 6. 10. *acc.*

Husband and wife both within age, joyne in a Feoffment by Deed indented reſerving rent, the Husband dyeth, the wife may enter, or have *Dum fuit infra ætatem*, but if ſhe was of full age, ſhe ſhall not have *Dum fuit infra ætatem*, for the nonage of the husband, although they were one perſon in Law, 14 *E.* 3. *Dum fuit infra ætatem*, 6. *F. N. B.* 192.

Note, the ſpeciall heir ſhall take advantage of the infancy of his anceſtor, as if Tenant in tail of Land in Borough Engliſh, makes a feoffment in fee within age, and dyeth; the youngeſt ſon ſhall avoyd it, becauſe hee is party in blood, and claimes by Diſcent from the infant, *C. Littleton* 337.

If an infant bringeth an action againſt his Guardian for mony, and recovereth it, if the Guardian bringeth the mony into the Court, and there depoſeth it, the ſame is a good diſcharge againſt the infant, and he ſhall not be ſued in an account, ſo was it adjudged *M.* 11. *Jac.* in the *Common Pleas*, in *Hughes caſe*.

A man did ſurrender his Copyhold to the uſe of an infant in his mothers belly after the death of the Surrenderor, it was adjudged *Mich.* 13. *Jac.* in *Simpſons and Southwells* caſe in *R. R.* that the ſurrender was void.

Firſt, Becauſe to an infant *in Ventre ſa meer*.

And Secondly, Becauſe it was to begin at a day to come.

In an Action of Debt brought for not performance of an Award, the caſe was this, Upon a ſpeciall verdict found, *Yates* and *Watſon* an Infant ſubmitted themſelves to an Award; and *Yates* was bound in an Obligation that *Watſon* the infant ſhould perform the Award, it was adjudged

adjudged in this caſe, *M.17. Jac. in B.R.* that the Bond was void, the only queſtion was, whether an infant ought to ſubmit himſelf to an Arbitrement, or to an award, and it was adjudged by all the Juſtices, that an Infant could not ſubmit himſelf to an arbitrement, and then if there were no ſubmiſſion there could be no Award; and ſo the Bond of *Yates* that the Infant ſhould perform the award, was utterly void, and ſo it was ſaid to be adjudged accordingly, *Hill* 2 *Car.* in the Kings Bench, *Rot.* 234. in *Knight* and *Stones* caſe, and in the argument of that Caſe it was agreed and vouched to be Law, and ſo to have been adjudged, *T.*4 *Car.* in *Pickering* and *Jacobs Caſe*, that a Bond taken of an infant for neceſſaries was good, and ſo a Leaſe made by an infant to try his title in an *ejectione firmæ* was good, becauſe it was for his apparent benefit, but it was holden that an infant could not bind himſelf to be an apprentice, & therefore the uſuall courſe was, that others were bound for his Apprentiſhip; and it was ſaid, that an infant hath not power to diſpoſe of his good himſelf, and then how can he give power to another to diſpoſe of them, and the power of an arbitrator is ſo high, that a Writ of Error doth not lie to reverſe his judgement.

Note, it was adjudged, *Tr.*15. *Car.* in the Kings Bench, in *Young* and *Youngs* Caſe. That the grant of the office of Regiſter in reverſion for life to an infant is good, and in that Caſe it was ſaid by *Jones* Juſtice, that it was adjudged in *Scamblers* Caſe, 44 *Eliz.* that the Grant of a Stewardſhip to an infant for life was a good grant, contrary to what is reported by *Coke*, 1.*p. Inſtitutes* 3.

What things done by a Feme Covert ſhall be good, and what not, and what to her.

NOte by the Court, that a Feoffment made to a Feme Covert, or a gift of goods, or an *Aſſumpſit* made to her, or a Sale of goods by her, or a Diſſeiſin by her, if the husband agree thereunto, or doth not diſagree are good, 27 *H.*8. 24.

Note that a woman now a Covert, who was a Feme ſole at the day of a *Precipe* brought, ſhe may wage her Law of not ſummoned, and the ſame is good, See 12 *H.*4.24.

If the husband and wife enter into Land in the right of the wife, where the wife or her anceſtors had not any thing in the Lands, yet the wife ſhall be Tenant, becauſe ſhe cannot waive it during the Coverture, and in that Caſe the Writ did abate for Miſnoſmer of the wife, *vide* 35 *Aſſ.* 5.

A woman who was ſole made a Feoffment, to reinfeoff her when ſhe required the ſame of the Feoffee, afterwards ſhe took a husband, and required then the Feoffee to reinfeoffe her, and it was holden that ſhe might make the requeſt well enough, and that the Feoffee might enfeoffe her, 35 *Aſſ.* 11.

The

The Deed of a Feme Covert who is bound with her Husband, shall not be inrolled, *Ex quo sequitur*, that the Deed of a Feme Covert is voyd, 7 *E.*4.5.

*Vi.*27 *H.*8.25. If a Feme Covert sell any thing, the sale is good, if the husband do not disagree, whereunto agrees *Read*, 21 H:7.40. but *Fineux* contrary, for he held that a Feme Covert could not do any thing which might turn to a prejudice to the husband, *contr.* of a thing which might be for his advantage, for if one give a thing to a Feme Covert, the same is good by the agreement of the husband, because it is for his advantage, contrary if shee buy any thing in the market, for that may be to his prejudice, but if shee buy the same to the use of the husband, he agree to it, the same is good, or if shee be commanded so to do by the Husband, and he said if shee buyeth bread or any thing which is spent in the house of the husband, if he doth know of the buying of it, she shall not be charged therewith.

Note by *Littleton*, 18 *E.*4.10. If a woman Executrix taketh a husband, and after shee releaseth the death of the Testator by Deed in her own name, the same is good, because shee doth represent the person of the Testator, *Chock contr.* and 21 *E.*4.24. but 21 *E.*4.50. 18 *H.*6.4. and 16 *H.*7 5. *Brian* and *Vavisour* are against *Chock*, and yet 2 *Hen.*7.15. *Brian* held the contrary, but in 16 *H.*7. by *Brian*, there a Feme Covert executrix may do all things which are matters of fact without her husband, as Release, or make Acquittances, or give Goods, But of such things which do appertain to the office of an Executor those she may do without her husband, but in matters of Record, shee ought to joyne with the husband, *Quod nota.*

*See C.*5. *part in Russells case, that the wife Executrix, without her husband is not good.*

See 3 *H.*6. 50. That a Woman brought Detinue of a Bailement made when shee was Covert and good.

If the husband and wife are bound in a Bond, for a release of a right which one had to the land of the wife, and the husband dyeth, the wife shall be charged with such bond, 44 E. 3. 33.

It is a *quere*, 14 H.8.17. If the husband enter into Religion, if the wife may alien without her husband, but see if the Husband abjure the Kingdome, that the wife is of ability to alien, 31 E:1: *Fitzh. cui in vita* 31: 40 E: 3:1: and *vi* 2:H:4: where it is sayd, *Ecce modo mirum, &c.* that the wife of a man which was in *Exile*, did bring an action in her own name, without naming the husband, but it is there holden, that a Feme Covert cannot disavow the suit of her husband:

See 32 H: 8. That a Feme Covert may be seised joyntly with others to the use of her husband, and *vi.* 10 H:7.20. that a Feme Covert, the Executrix of *Cestui que use* did sell the Land to her husband, and the sale was good.

See 49 E:3:13: by *Belknap*, That an Obligation made to a feme covert is good.

What

What Acts ſhall binde a Feme Covert, what not.

IN a Writ of Right, after the miſe joyned, and the wife is re-entred upon the default of her husband, if ſhee afterwards make default, and finall Judgment is given, ſhee ſhall be bound for ever, 44 *E.* 3. 28.

If a Feme Covert levieth a fine without her husband, if the ſame be executed, and afterwards the husband dyeth, the ſame ſhall bind the wife, 17 *Aſſ.* 17.

In 5 *E.* 3. *Fines* 95 *I.* rendred Land to the husband and wife, for which the husband and wife would have granted a Rent, but it was not ſuffered to paſs without examination of the wife.

In 17 *E.* 3. *Avowry* 95. Dower was aſſigned to husband and wife of the poſſeſſion of her firſt husband, for which aſſignment the husband and wife granted a Rent, with clauſe of diſtreſſe, it was holden that the grant was void, but it was ſaid, that if the Guardian had rejected, that the aſſignment was of more then ſhee ought to have had in Dower, and that by Deed, then the rent had been good by way of Reſervation, ſee to that purpoſe *Plow. Com.* 141.

If a Feme Covert be received upon the default of her husband, in a *Ceſſavit*, and find Sureties, that the Land ſhall be bounden; the ſame ſhall bind the wife, but *quære*, if ſo in the caſe of an infant. 19 *E.* 4. 5.

One enfeoffeth a woman, to the intent that ſhee ſhall ſell the Land, and the mony thereof received ſhall diſpoſe to the uſe of the dead, ſhe afterwards taketh a husband, and afterwards ſells the Land without her husband, it is holden by *Shard* and *Wilby*, 34 *Ed.* 3. *cui in vita* 19. that ſhee ſhall not have a *cui in vita*, *quære*, for I have heard it to be holden contrary, in one *Gawdyes* caſe.

In 16 *H.* 6. *Releaſes* 41. It is ſaid, that if an infant or a Feme Covert Executor, do releaſe it is good, and ſo is 21 *E.* 4. 13. but ſee C. 5. *part*, in *Ruſſells* caſe, that the releaſe of the wife is not good, without the husband.

A man was ſeiſed of an advowſon to the uſe of a Feme Sole, ſhee took husband, and afterwards they joine in a grant of the advowſon, it is holden 6 *H.* 7. 3. by *Curiam* that it is a good grant during the life of the husband, but void as to the wife, *contra.* if the wife joyne in a feoffment, for that is the Act of the wife as well as of the husband.

Quære if the Hu band and Wife make a feoffment of Land of the Wife which is in uſe to the wife, if the ſame be within the Statute of 1 *R.* 2. and if it be, then what remedy there is for the wife if ſhee would diſagree after the death of the husband, *vi.* 7 *E.* 4 a Feme Covert brought a *Subpæna.*

By

By what acts the husband may prejudice his wife.

IF a man doth enfeoff a woman upon a Condition, or make her a Leaſe rendring Rent upon condition of reentrie, and she takes a husband who breaketh the Condition, and the Feoffor or Leſſor may enter, and the wife shall be bound hereby, 20 *H.6.* 28. by *Newton.*

33 *H.6* 31. If the husband doth appoint one to be Attorney for him and his wife, the wife cannot diſallow the Attorney.

So if the husband diſclaim in Avowry, or claim Fee, in a *quod juris clamat* of Land in the right of his wife, it shall bind the wife, 9 *H.6.*22. by *Marl* 30 *E.*3.28.32 *E.*3. *Purſuit* 127.

If a woman Leſſee for life taketh a husband who committeth waſt, it shall bind the wife, 9 *H* 6. 52.30 H. 6. 30. by *Priſot.*

If a woman Signioreſſe hath title to enter for Mortmain, and taketh a husband, who ſuffereth a year and a day to paſſe, it shall bind the wife.

If a woman refuſeth to be Executor, and taketh a husband, and afterwards he brings an action in both their names, it is a good adminiſtration, and shall bind the wife, 33 *H.6.*31.

If husband and wife be joint Leſſees, and the husband prayeth in aid of a ſtranger, and dieth, the leſſor cannot enter. So if the husband and wife covenant to levy a Fine by ſuch a day, and the husband dieth, there the wife shall not be charged with the Covenant, becauſe it was onely the act of the husband, but if a woman be leſſee for life, and she taketh a husband who prayeth in aid, it shall bind the wife, 15 *E.*4.15.

If the huband and wife be vouched, and they come the firſt day ready to enter into the warranty without proceſſe, the ſame shall not be allowed, 45 *E.*3. 11.

Note that a Feme Covert may be a Receiver, and charge the husband in an action, if he agree to the receit, for iſſue was taken upon the agreement, 13 *B.* 2. *Fitz. Action* 50.

Husband and wife make a Leaſe before the Statute reſerving Rent, the husband dieth before the day of payment, and before the day ſhe taketh another husband, who at the day accepteth of the Rent, and dyeth, the Caſe ſhal be bound thereby, becauſe she might have entred before she took her ſecond husband, *Ma. Dyer* 159. *vide* C.4. *part.* 18 *acc.*

What things of the wife, Chattels reals or perſonals are given to the Husband by his enter-marriage with the wife.

IF the wife be poſſeſſed of a leaſe for term of years, of lands or Tenements, or of any other Chattels realls, and takes a husband, the

husband is poſſeſſed thereof in his own Right, and may diſpoſe of the ſame, or may forfeit the ſame by attainder or otherwiſe, *Plo. Com.* 260. *b. acc C. Lit.* 351. *acc.*

If the husband be poſſeſſed of a term for years by marriage of the wife, ſuch a term for years may be extended for the Debt of the husband.

Pierpoint being poſſeſſed of a Leaſe for the Term of 99 years, deviſed the ſame by his will *in hac verba, viz.* I deviſe my Leaſe to my wife during her life, and after her death I will, that the ſame ſhall go to my children unpreferred, and made his wife his Executrix and died; the wife afterwards married with Sir *Thomas Falſter*, who being poſſeſſed of the Leaſe, the ſaid Leaſe was put in execution, and ſold upon a *Fieri facias*, upon a recovery of 1401 in debt againſt Sir *Thomas Falſter*, afterwards Sir *Thomas* died, and the Adminiſtrators of Sir *Thomas* did afterwards reverſe the Judgement given in the action of Debt by a Writ of Error and then the wife died. It was adjudged in this caſe, 27 *Eliz.* in the Kings Bench betwixt *Luddington* and *Amner*, that the ſale of the Leaſe by the Sheriffe upon the *Fieri facias* was good, although the Judgement was afterwards reverſed. 2. It was in that Caſe adjudged, that the executory deviſe of the Leaſe unto his children unpreferred was good to take effect after the death of the wife, and yet the children unpreferred could not be reſtored to the Term, becauſe by the ſale the vendee had an abſolute property in the Term, and therefore although the Judgement was afterwards reverſed, yet the ſale being a collaterall act done by the Sheriff ſhould not be avoided, but in that Caſe it was holden, that the children unpreferred ſhould have the value of it.

In 7 *H.* 6. 2. there the husband was poſſeſſed of a Term in the Right of his wife, and charged the ſame, and the queſtion was holden, that it being a Chattell reall, he might, during the life of the wife, have diſpoſed of or ſold the whole Term, *à fortiori* he might charge, *Quia quicquid continet majus continet minus*; So if the husband poſſeſſed of a Rentcharge for years in the right of his wife, or of an Obligation entered into the wife whileſt ſhe was a feme ſole, the husband may releaſe the Rent, or diſcharge the Obligation, but in ſuch Caſe if the husband dieth, they not diſpoſed of, the wife ſhall have the Rent again, and ſhall have an action upon the Obligation by *Strange* and *per Curiam*: in ſuch Caſes when the wife continueth her eſtate after the death of her husband, ſhe ſhall be in by the firſt Leſſor, and ſo ſhe ſhall hold the Land diſcharged of the Charge of her husband.

Mich. Term 35 *Eliz. in B R.* was this Caſe, A man poſſeſſed of a term of years in the right of his wife, made a Leaſe for years of the Land to begin after his death, he died and his wife ſurvived him, and the queſtion was, whether the vvife ſhould have the Land, or the Leſſee, and it vvas reſolved by the vvhole Court, that the Leſſee ſhould have it during his terme; for as the husband during his life might have contracted for the Land, for the vvhole Term vvhich the vvife had in it, ſo he might do of

any

any part of that Term at his pleasure: For if he may devise the Land for one and twenty years to begin presently, so he may devise it to begin after his death, if the term of the Wife be not expired; but for the Remainder of the term, if the Husband made no disposition of it during his life, It was holden in that case, that the Wife should have it.

20 *Eliz.* There was this case, Lands were demised to Husband and Wife for their lives, the Remainder to the Survivor of them for years: The Husband granted over this term for years, and died: In that case it was adjudged that the Wife should have it and not the Grantee, because there was nothing in the one or the other to grant over untill there was a Survivor; and in that case, if the Wife had died, and the Husband had survived, yet he should have had the term against his own Grant, like unto the case. If a man maketh a Lease for life, the remainder to the right Heirs of *I. S. I S* hath issue a Son, who selleth the Remainder, and afterwards *I. S.* dieth, this Son being his Heire notwithstanding his sale, shall have the Remainder, and not the Grantee, because it was not in him at the time of his Grant, but by matter *Ex post facto, viz.* after the death of his Father.

If a woman hath a right of Action unto or for any chattells reall, and taketh a husband and dyeth, the husband which surviveth shall not have the thing, or Action for the same, but the Executors or Administrators of the wife, and so it is if shee hath but a possibility to have a thing, 10 H. 6. 11. 7 H 6. 3. C: *Litt:* 35 *Hacc.* And so it is, if a woman who hath Chattels reall, or other Chattels *sui ante droit*, as Executor or Administratrix, if she taketh Husband, and afterwards dieth, those are not given to the Husband by her inter-marriage with him, and so it is where she is Guardian in Socage, although the Husband doth survive the Wife, as it was adjudged 32 *Eliz.* in the Common Bench; and also 31 *Eliz.* in the Chancery, in *Withams* case.

If a woman be possessed of a term for years, and granteth the same over to another for her use in trust, and afterwards taketh a Husband and then dieth, the Husband shall not have this Trust, but the Executors or Administrators of the Wife, 38 *Eliz Waterhouses* case *adjudge. acc.* And so was it also adjudged *Trin.* 15 *Car.* in the Kings Bench, in Sir *John Saint Johns* case, where the principall case was; The Lady Cromwell was possessed of divers Leases and Conveyed them in Trust, and afterwards married with Sir *John St John*, and afterwards she received the money which came of the Trust, and with part of it she bought Jewels, and other part of it she left in money, and died; Sir *John St John* took Letters of Administration of the Goods of the Wife: The Ecclesiasticall Court would have forced him to have accounted for the Jewels and for the mony, and to have exhibited an Inventary of them into that Court; whereupon he sued out a Prohibition, and the opinion of the Court was, that the property of the Jewels was in the Husband, and that he should not exhibite an Inventary thereof into the Ecclesiasticall Court. And for the money,

ney, the Court was then ſome of opinion, that the prohibition would not lye, becauſe the mony received upon the Truſt was the Truſtees monys, and the Wife had no remedy for it but in Equity, and then the Husband ſhould have it as Adminiſtrator, and ſo was accountable of it: But Juſtice *Barkley* was of opinion, that the Prohibition ſhould be cited as to the money alſo, becauſe the Truſt was executed when the Wife had received the money, and by the receit the Husband had gained property therein as Husband, and therefore not accountable for it; and if the Truſtees do conſent that the Wife ſhall receive the money (the contrary to which doth not appear in the caſe) that there the Husband might gaine a property in the money; and at laſt a Prohibition was awarded for the whole, both the Jewels and the money.

Chattels reall of a mixt nature, *viz.* part in poſſeſſion and part in Action which happen during the Coverture, as arrearages of rent which are incurred during the Coverture, the Husband ſhall have them by the inter-marriage with the Wife, *C.4.part.Ognells caſe*, 18 *H.6.9.7 H.7.2. acc.* if he over-live the Wife: But if the Husband dieth, and the Wife doth ſurvive them, the Wife ſhall have them. And now by the Statute of 32 *H.8.cap.37.* the Husband ſhall have all the arrearages which did incur before the intermarriage, in caſe he doth over-live the Wife: and ſo was it adjudged, 17 *Eliz.* in the Common Pleas, *Rot.* 457. in *Sharps* caſe, *vi. C.Lit.* 351 *acc.* But all Chattels perſonall which are in the poſſeſſion of the Wife in her owne right, the Husband ſhall have them by the inter-marriage with the Wife, and he may diſpoſe of the ſame if he doth ſurvive the Wife, or not, 7 *H.6.2,&* 3.10 *H.6.21.E.4.4.4 H.6.5.* But Chattels perſonall in Action, the Husband ſhall not have them, if he and his doth not recover them in the life of the Wife, 3 *H.6.23.21* H.7.29.

39 *E.3,17.* If a woman hath but a bare poſſeſſion of Chattels perſonals, as by Trover or Bailment in that caſe they are not given to the Husband by the inter-marriage with the Wife; but an Action of Detinue lieth for them againſt the Husband and Wife.

Feme

Feme Covert.

A Leaſe is made to Husband and Wife for their lives, the remainder to the Executors of the Survivor of them; the husband grants the term, and dieth: the ſame ſhall not bar the Wife, becauſe he had but a poſſibility and not an intereſt, *H.*17 *Eliz.* in *B.R.* adjudge.

The Husband cannot give Land to his Wife in his life-time; but he may convey Land to the uſe of his Wife, or deviſe to her: But a Feme-covert ſeiſed of Lands in fee, cannot deviſe it to her Husband, becauſe ſhe is *ſub poteſtate viri*, and the Law ſhall intend it to be done by the coercion of the Husband, *C.Lit.*112.*b.*

If a Feme-covert be ſeiſed of an Advowſon, and the Church void, and the Wife dieth, the Husband ſhall preſent, becauſe it is not a thing in reverſion, but otherwiſe is it of an Obligation made to the Wife, 14 *H.*4.12. 45 *E.*3.15.*C.Lit.*120.*b.*

A Feme-covert who hath an authority to ſell Land, may ſell the ſame to her Husband, becauſe ſhee is but an Inſtrument, and the intereſt paſſeth from the Feoffor or Deviſor, 11 *H.*7.*acc.C.Lit.*187. *acc.*

A Feme-covert who is Executor, if ſhe take the Debtor to Husband, it is as no releaſe in Law of the Debt, becauſe the act of Law will not work a *Devaſtavit*, 31 *Eliz.* in *B.R.adjudge*, *C.Lit.*264.

Husband and Wife both within age joyne in a Feoffment by Deed indented, reſerving rent, the Husband dieth, the Wife may enter, or have *Dum fuit infra ætatem*, but if ſhee were of full age, ſhee ſhall not have *Dum fuit infra ætatem* of the Husband, although they be one perſon in Law, 14 *E.*3.*Dum fuit infra ætatem*, 6 *F.N.B.*192.

A Feme-covert cannot ſurrender her Copyhold Land to her Husband, and ſuch a cuſtome to ſurrender is void, 25 *Eliz.* in *C.B. Shepwiths* caſe: So ſhe cannot give or deviſe her Lands to her Husband, 3 *E.*3.*br.deviſe*, 34. *old N.B.* in addition *ex graviquerela*, *acc.*

If a Feme-covert, who hath a Joynture according to the Statute of 11 *H.*7. after the death of her Husband doth accept of a Fine *ſur conuſans de droit*, it is a forfeiture of her Eſtate, *H.*23 *Eliz.* in *C.B adjudge.*

If a woman Leſſee for life taketh a Husband, and ſhe and her Husband make a Leaſe for life, rendring rent, and the Wife doth avow for the rent after the death of her Husband, the Leſſor may enter, becauſe by her Advowry ſhe hath agreed by matter of Record to the forfeiture, 43 *E.*3.*Entr. con.*23. 34 *H.*6.1.

A man

A man enfeoffs a Feme ſole upon Condition that ſhe may grant it over for his ſoule; She taketh a Husband, and both of them make a Feoffment, ſhe ſhall not have *Cui in vita*, becauſe the Land was given to her upon the ſame condition, 34 *E.* 3. *Cui in vita* 19.

A man grants Lands to a Feme-covert, or Infant, upon condition to grant it over: *Quære*, if during the minority or Coverture the Conveyance be by Feoffment, whether after the Coverture ſhe may enter, becauſe it ought to have been by Fine, it was *Gardies* caſe, 2, & 3 *Eliz.* and *Paſc.* 31 *Eliz.* in the Star-chamber. It was holden by the two chief Juſtices, that if an Infant be enfeoffed to re-enfeoff, that if he do not mention the re-enfeoffment, the Feoffor ſhall enter, and if he do re-enfeoff, the Infant may enter. or have *Dum fuit infra ætatem*, *vi. Plow. Cogit. ac.*

If a Feme-covert be enfeoffed, the husband being beyond Sea, who returnes and diſagrees, yet till entry by the other, the Freehold ſhall not be deveſted; but if the husband dieth before his entry, then is the wife remitted, and the title of entry which the Feoffor had, gone, and now he ſhall not avoid the eſtate of the wife.

COVENANT.

I. *How the Declaration in Covenant ſhall be.*

COvenant upon the Deed of the Defendant, that the Plaintiff and his Tenants ſhall be quit of Suit to the Defendants Mill, &c. and that the Defendant had diſtrained the Plaintiffs Tenants, *viz A.B* and *S.* for to do ſuit at his Mill, &c. and ſhewed the Deed which was conditionall: And therefore the Declaration was challenged: But yet it was holden good, *P.* 31. *E.* 3. *Covenant.* 1.

Covenant againſt Leſſee of a Mill, for that he covenanted by Deed to leave the ſame at the end of the term in as good plight, &c. And it appeared by his Declaration, that the terme was not yet ended, wherefore *Nihil capit per breve*: As an Action doth not lye upon a Covenant to build a Hall within a certaine time, before which time the term is ended. 12 *E.* 3. *Covenant* 2.

In

In Covenant againſt Leſſee, who coverants to have it in as good plight, &c. It is ſufficient to declare that he was not put to charges to have the Coverture, &c. for he is bound to no more by ſuch Covenant, 4 *E.* 3. 29. *Covenant.* 4.

A Writ againſt the Heire of him who covenanted to leave it in as good plight, &c. after the term ended, he need not declare of a Requeſt made to the Leſſee, becauſe the time is paſt. Alſo it is ſufficient to declare upon a Covenant broken, as waſte in houſes, and eſpecially how in a Hall, 40 *E.* 3. 5. *Covenant* 16.

A Writ againſt the Major and Commonalty of *D.* by the Major and Commonalty of *L.* for that they ſhould be quit of Toll, &c. And declared that *I.* and *B.* Burgors of *D.* took toll of a Townſman of *L.* And holden a good Declaration, becauſe the taking of them as Officers, is their taking, &c. 48 *E.* 3. 17. *vi. Covenant* 22.

Covenant upon the Warranty of the Leſſor, for the Termor being ejected by the Eſcheator for the King, doth not lye without a ſpeciall cauſe, &c. for if without cauſe, he may have his Action againſt him, *M.* 3 *E.* 3. *Covenant* 6. 26 *H.* 8 3. 21 *E.* 4. 30.

Vi. 32, *H.* 6. 52. *b.* 46 *E.* 3. 4. 39 *H.* 6. 8. 34 *H.* 6. 37. *F.N.B.* 145. *acc.*

II. *Covenant for the Leſſee againſt the Leſſor,* & e contra, *and when ſhall be ſued, and upon what Deed.*

WHen a Leſſee covenants with the Leſſor to leave a Mill, or a Houſe in as good plight, &c. although now the Term is ſo ſhort that it is not poſſible for him to amend it according to the Covenant, yet the action will not lye before the end of the term, 12 *E.* 3. *Covenant* 2.

But if there be ſuch a Covenant and a Wood be leaſed, as to the Wood the Action lieth within the term, becauſe it is impoſſible to leave it in ſo good plight, 10 *E.* 1. *Covenant* 29.

21 *Jac. in B.R. adjudged acc. in Walters ev and Mountagues caſe* 29.

Note, by the Covenant to leave it in as good plight, &c. there is no more intended, but that the Leſſee keep the houſing with covering, and ſuch neceſſary reparations ſo as they do not fall down; for by ſuch Covenant they ſhall not be charged for the impairement which hath hapned by continuance of time, and is not poſſible to be redreſſed; ſo as the Covenant hath a reaſonable conſtruction, 4 *E.* 3. 29. *Covenant* 4.

But the Leſſor ſhall have a good Action after the term upon ſuch a Covenant for a houſe which fals by Tempeſt within the term, which is not re-edified: But an Action doth not lye upon ſuch a Covenant for Trees blown down by wind, for the impoſſibility, 40 *E.* 3. 6. *Covenant* 16.

Covenant for a Termor upon an Indenture, which is, that the Leſſor enter for non payment, and ſhall retaine the Land till agreement be made with him: And the Defendant claimed the re-entry, and they were at iſſue upon tender at the day: And it was found that parcell was paid, and that

that he did enter for the reſidue not tendred at the day. But the ſame day after the re-entry the Plaintiff did tender the reſidue, and the Leſſor did refuſe it, and kept himſelf in, *&c.* And now the Plaintiff did tender the reſidue in Court, by which he recovered the reſidue of the term, and damages; but the term being ended, the whole in damages. *Fitz.* conceived that the iſſue was found for the Plaintiff, 27 *H.*8.5.20 *E.*3. *Covenant* 3.

The Tenant of the King made a Leaſe for years to *R.* who aſſigned his term to *H.* with Warranty: Afterwards the Tenant died, the King upon Office found ſeiſed the Ward, and ouſted the Leſſee: He may well have Covenant againſt *R.* for the King hath Title: So no Action lieth againſt the Eſcheator of *Quare ejecit, &c. M.* 3. *E.* 2. *Covenant* 6. And *R.* ſhall have Covenant againſt the Heire at his full age, 34 *E.*1. *Covenant* 26. 26 *H.* 8.3.

If my Tenant maketh a Feoffment by Colluſion, and dieth, and I recover the Ward, *&c.* the Feoffee ſhall have a good Action of Covenant againſt the Heire at his full age, *P.*18 *E.*3. *Covenant* 7.

But Leſſee by Deed being put out by him who hath not right, ſhall not have an Action of Covenant upon the Warranty againſt the Leſſor, becauſe he hath good remedy againſt ſuch ſtranger, 22 *H.* 6.52. *Covenant* 8. 3 *E.*3. *Covenant* 6.34. *E.*1. *Covenant* 26. and 26 *H.*8 3. *acc.* But if he be put out by him who hath right, Covenant lieth although he hath no Warranty, by *Needham*, 32 *H.*6.38.47 *E.*3.12.48 *E.*3.22. by *Finchden ac.*

11 H.4, 5. *A Parſon makes a Leaſe for years, and reſigns, Covenant lyeth againſt him, but it muſt be againſt him:* Nuper Parſon.

But if the Leſſor doth enfeoff a ſtranger after the Leaſe, the Leſſee may have a *Quare ejecit* againſt the ſtranger, or a Covenant againſt the Leſſor, 46 *E.*3 4.

If the Leſſor grant the Reverſion over, and after Attornment the Grantee looſeth the Freehold in a *Precipe*, the Termor ſhall have Covenant againſt the Leſſor, and not againſt the Grantee, and that without Deed by *Finchden*, 48 *E.*3.22.

Leſſee for years covenants to repaire and leave the houſe in as good plight; the Leſſee aſſignes over his term, and the Leſſor his Reverſion: It was adjudged 15 *Jac.* in *B R.* that the Aſſignee of the Leſſor ſhall have Covenant againſt the firſt Leſſee.

Vi 42 *E.* 3. 3. *by Finchden*, 5 *H.*7.18. *acc. C.* 4. *part* 80. *in Nokes caſe*, 9 *Eliz. Dyer* 257

The Leſſee of the Leſſee ſhall have Covenant againſt the firſt Leſſor, if the Leaſe were made to him and his Aſſigns with Warranty, *F.N.B.*145. So without the word (*Aſſignee*) by *Finchden*, 48 *E.* 3. 22. *F: N. B.* 146 *C.*

Note by *Finenx*, that a Leaſe for years by Indenture ſhall be good, although there are not other words but words of covenant, 20 *H.*7:12

A covenant upon a Leaſe may be brought either where the Leaſe is made, or where the land is, although it bare date where the Leaſe is made, 26 *H.*6. *covenant* 9. *F.N.B.* 146. *G.*

III. *What*

III. *What thing the Plaintiff ſhall recover in Covenant, whether the Terme, or Damages for it.*

THe Leſſee who recovers in Covenant, ſhall recover the Term which remaineth, and damages for the occupation of the Leſſor, and if the Term be paſt or ended, or defeated by entry of a ſtranger who hath Title, he ſhall recover all in damages, 20 *Edw.* 3. *Covenant* 3. *Fitzh. N.B.* 145 *M.*

42 E. 3. 24. *he ſhall recover the Termer, vi.* 4. Eliz. Dyer, 257.

Note by *Shipwith* and *Knevit*, That if the Leſſor put out his Leſſee for years, That in a Writ of Covenant, he ſhall not recover his Term, but all in damages, *M.* 38 *E.* 3. 24. *Covenant* 14. in waſt, (See there they ſpoke of the Heir) but *P.* 6 *R.* 2. *Covenant* 23. It is ſaid by the whole Court, that he ſhall recover his Term in a Writ of Covenant, and ſo by all the Juſtices, 31 *Edw.* 1. *Covenant* 31. That a Termor being put out by the Guardian, ſhall have an action of Covenant againſt the heir at his full age, and ſhall have his Term.

IV. *Where the Heir ſhall be charged with the Covenant made by his Anceſtor, and where hee ſhall have an Action upon a Covenant made to his Anceſtor.*

IF my Anceſtor covenanteth, that he nor his heirs will not erect a mill in ſuch land, if hee or his ſon erect a mill and dye, and a Covenant is brought againſt me upon that, and declares, that I will not abate it, but continue the ſame, *&c.* he needeth not to ſay that I am ſeiſed of the Land where, *&c.* as heir; contrary againſt Executors, 32 *H.* 6. 32. Wherewith agrees *Finchden*, 48 *E.* 3. 1. but *Perſay*, and *Wichingam* held, that neither the party nor Executor are bound if they be not named, for although that I have nothing, or that the mill be down, the Action lyeth for the levying of the ſame by my Anceſtor, as if the Leſſor putteth out his Termor and dyeth, Covenant lyeth againſt him although he hath nothing in the Land, 4 *E.* 3. 57. *Covenant* 5. But ſee, that *Littleton* ſaith, if I covenant to build a houſe and do it not, and dye, Covenant lyeth againſt my Executor, but not againſt the heir without warranty. *Needham* and *Littleton* ſaid, the heir is not bounden if he be not named. 33 *H.* 6. 38.

Note, An action of covenant doth not lye againſt the heir upon the ouſter of Leſſee for yeares, who hath a leaſe by Indenture of the Father, unleſſe there be an expreſs warranty for him and his heirs, and that he hath aſſets by diſcent.

Feoffee by Colluſion being put out by the Lord after the death of the Feoffor, the heir being within age, he or his heir ſhall have an action of Covenant againſt the heir when hee commeth of full age. *P:* 18 *Edw.* 3. *Covenant* 7. So ſhall the Termor have, being ouſted to the Guardian, 19 *Edw.* 2. *Covenant* 25. 31 *Edw.* 1. *Covenant* 31. and he ſhall recover his Term.

14 H. 8. Dyer 14. C. 5. p. 16. Spencers caſe, 28 H. 8. Dyer 22 21 H. 4. 7. 45 E. 3 17. 3 Ma. Dyer 114.

Covenant against the Maſter and his confreeres, upon a Deed of the Predeceſſor, that they and their ſucceſſors ſhould find a Chaplain ſinging in the Chappell of *T.* &c. and the Plaintiff was his heir &c. whereas his Anceſtor had aliened the Mannor where the Chappell was, and took it back to him, and the Plaintiff, who ſurviving, aliened it to *B.* who enfeoffed C. now the wife of the Plaintiff, and becauſe it is not mentioned in the Deed, that the Chappell is in the Mannor, and a man may ſing maſs for me in another Chappell, and none can have an action upon this Covenant but the heir, the Writ was holden good, but if the Covenant had been to ſing for Lords of the Mannor dwelling is that Mannor, it ſhould be otherwiſe, which was granted, & the wife ought to be named 16 *H.* 6. C. 13.

vi. C. 5 part in Spencers caſe, that covenant doth lye, when the covenant doth extend to a thing in eſſe. 42 E. 3. 5. Grandfather, father and ſon, A Prior covenanted with the Grandfather that he and his Covent would ſing every week maſs, in a chappell, parcell of the mannor, i. the hand of the Grandfather, the Grandfather did give the mannor in taile, it was adjudged in that caſe, that the intaile ſhould have covenant againſt the Ter-Tenants, becauſe the covenant was to do a thing annexed to the chappell, and ſo annexed to the mannor.

See 16 *H.* 7. 9. and there the Chappell being ſpecially mentioned, it was a good barr for the time, to ſay, that the Chappell where &c. was fallen down, and not rebuilt, which thing the Plaintiff ought to do, he which ſued, was a ſtranger to the Covenant, but it was for his advantage.

Covenant againſt the Prior by *J.* as heir of *P.* upon a Covenant of the predeceſſor, to ſing every week in ſuch a Chappell in the Mannor of *K.* for him and his ſervants, it is no plea that he nor his ſervants do not dwell there; it was alſo challenged, becauſe the Plaintiff had an elder brother, and he Feoffee of the Mannor, and declared of uſage to ſing time out of mind in the ſame Chappell, and the opinion was with the Plaintiff, 42 *E.* 3 3. *Covenant* 17.

C. 5 part Spencers caſe, vi. 7. H. 4. 6. 1 H. 4. 2. a.

See 1 *Hen.* 5. 2. where *Hanke* held, that a Covenant ſhould not diſcend.

If a man maketh a Leaſe for years and binds himſelf to warrant the land to the Leſſee, his heirs and aſſignes, the heir or Aſſigne ſhall have an Action of Covenant thereupon to *E.* 1. *Covenant*, 18.

V. *Where Aſſignee, or a ſtranger to the Covenant ſhall have the action, though hee is not heir.*

C. Lit. 384. acc.

TWo Coparceners make partition, and the one covenants to acquit the other of a certain ſuit due for the land, and the parcener to whom the Covenant is made doth alien the land, the Lord doth diſtrain for ſuit, hee ſhall have a Writ of Covenant againſt the other, which was agreed, becauſe the Covenant goes to the Land, &c. but where it goes with the perſon, he which bringeth the Action ought to be party or pri-

vy

vy, as heir or Executor of the party, *vi.* 42 *E.* 3.3. *Covenant* 17. 2 *H.*4: 6. *Covenant* 13.

Aſſignee of Leſſee for years ſhall have Covenant upon a Warranty made to the party, his heirs and aſſignes, *Edw.* 1. *Covenant* 28. ſo upon a Leaſe for the life of *T.* and ten years over to his Executors and Aſſigns, without warranty expreſſe, 19 *Ed.*2. *Covenant* 25 *F.N:B.* 145. which ſaith, that the Aſſignee of the Termor ſhall have covenant although Aſſignes be not mentioned in the Deed, *vi.* 48 *E.*3:22. *acc.*

*vi. C.*5 part *Malloriescaſe, P* 8 *Jac in Co. B. in Briſtowes caſe, adjudge acc.*

But note, That Covenant doth not lye againſt a ſtranger grantee of the reverſion, but againſt the Grantor, 48 *E.*3.22. *Covenant* 21. But now covenant lyeth againſt the Aſſignee of the Reverſion by the Leſſee or his Aſſignee, and a covenant lyeth by the Grantee of the Reverſion or his heir, againſt the Leſſee or Aſſignee by the Statute of 32 *H.* 8. *Cap.* 34.

Plow. C. 17. *Hill.* 51. *Grannges caſe.* 14 *Eliz.* *Dyer* 307. *Winters caſe. C.*5. part 54. *Knights caſe. C. Lit:* 215: *acc.*

VI. *Covenant ſued by Executors or Adminiſtrators, or againſt them upon the Deed of the Teſtator.*

A Man covenanted to put an Apprentice with *A.* during a certain term, and eſſoined him during the term, covenant lyeth againſt his Executors, and if Tenant in tail maketh a Leaſe for years and dyeth within the terme, and the termor is put out by the iſſue in tail, he ſhall have covenant againſt the Executors, 47 *Edw.*3. *covenant* 20. And if the Apprentice depart after the Death of the Teſtator, the Action lyeth againſt the Executor, although they are not named in the Deed, and if a man covenant that hee himſelf will ſerve me, and departeth, *&c.* and dyeth, I ſhall have Covenant againſt his Executors, 48 *Edw.*3.22. by *Finchden*, But if a man covenanteth to enfeoff another before ſuch a day, and dyeth before the day, his Executors ſhall not be charged, ſo if a covenant be to performed by himſelf during his life, and he dye before, *&c.* but if hee covenant to build a houſe before ſuch a day, and he dyeth before the day, covenant lyeth againſt the Executors, for they may perform it, 10 *H.*7.18.

vi: 49: *E.*3; 1: 28 *H.*6.4. *ac. vi.*3, *Ma. Dyer* 114. 3 *Ma. Dyer* 114. Hide *covenanted with his Leſſee to pay quit rents, and dyed, it is a quere there, if his Executors be bound to pay them. but ſee C.*5. *part* 16 *in Spencerscaſe holden, Executors are bound to pay. Vi. Finches book Lit. cap.* 17. *and* 42, *E:* 32 2: *it is perſonall* & ruirit perſoea.

Executors brought Covenant upon a Leaſe for life to the Teſtator, who covenanted, that if hee dyed within twelve yaars, that his Executors ſhould hold over the term, and it appeared that others were Executors, and not the Plaintiff, but becauſe they refuſed, the Ordinary committed adminiſtration to the Plaintiff, and he took nothing by his Writ 19 *E.*3. *covenant* 24.

That Executors ſhall have covenant, ſee *F.N. B.* 145 and there is opinion that adminiſtrators ſhall have an action of covenant, *F.N.B.* 146 *B.*

15 *Eliz: Dyer* 324. *A Termor covenanted for him and his Executors to repaire the houſes*, ad propria onera *not being decayed in default of the Leſſee, or his Executors and dyed. the houſes were burnt in the default of the Executors, adjudge that covenant lay againſt them, and damages recovered* de bonis teſtatoris, *and not conditionally if they had not then of their own goods.*

VII. *The Bar in a Writ of Covenant.*

COvenant that he ſhall not levy a Mill againſt the Heire, it is no plea for him that he hath not the Land as Heire, nor that the Mill is now abated, if it were levied after the Covenant made by the Anceſtor, *M.* 4. *E.* 3. *Covenant* 5.

Of a Bar in Covenant by him who is not party, *vi.* 2 *H.* 4. *&* 42 *E.* 3 And of Covenant for to leave in as good plight, *&c.* and the Bar. See *Diviſion* 2. *&* 40.

He which covenanteth to marry my Daughter, and ſhe refuſeth, yet he ſhall forfeit his Covenant: And he who Covenants to enfeoff foure, and two do not come, yet he may make a Feoffment to the foure, and deliver Seiſin to two, 33 H. 6. *barre* 62.

VIII. *In what County Covenant ſhall be ſued.*

IF a man maketh a Leaſe in *Mid.* of Land which lyeth in another County, the Leſſee ſhall have Covenant in which of the Counties he pleaſeth, notwithſtanding the date of the Deed, 26 H. 6. *Covenant* 9. But *Fitz.* conceives that the Writ brought in one County, whereas the Deed beareth date in another County, ſhall abate, *F. N. B.* 146. *vi.* 3 H. 6. 15.

IX. *Covenant without a ſpecialty.*

COvenant lyeth in *London* without Specialty by Cuſtome, *T.* 27 H. 6. *Covenant* 11. *F. N. B.* 146. E. And a Writ of *Plegiis acquittandis*, without Specialty by Cuſtome, 43 E. 3. 11. And without Covenant, *F. N. B.* 137. Covenant upon a Deed, Poll 30 *E.* 3. *barr.* 167. *Perkins* 26. and *F. N. B.* 145.

And ſee where a Covenant ſhall be pleaded by Deed Poll, and by that part of the Indenture, which doth not belong unto him, *M.* 11 H. 7. 12. by *Danvers.*

X. *Where a Covenant lieth againſt Leſſee for life, and if Freehold paſſe by Covenant.*

VPon a Leaſe for life with Warranty: Covenant doth dot lye without ſpeciall words, that if he be ouſted he ſhall have Covenant; yet there it

it lieth not, if he be put out by him who hath no right, *T.* 26 *H.* 6. *Covenant* 10. *F. N. B.* 145. But ſee that the Feoffee by Colluſion being ouſted by the Lord who claimeth the Ward, ſhall have Covenant, 18 *E.* 3. *Covenant* 7. And if I Covenant, or bargaine that *A.* ſhall have my Land whereof I am ſeiſed, the Land doth not paſſe, nor the uſe; otherwiſe it is, if at the time I have Feoffees to my uſe of the Land 21 *H.* 7. 29. But all is as one, and that the uſe ſhall paſſe by the Bargaine, and that without naming of Heires, by *Shelley*, 27 *H.* 8. 5.

XI. *Covenant againſt Pledges.*

THe Principall found Pledges by Deed; and further, *Obligamus nos & utrumque noſtrum. &c.* Now the Party may chooſe if he will have his Action againſt the Principall, or againſt the Sureties, 39 *E.* 3. *Covenant* 15.

And if the Covenant be to leave the Land in as good plight, *&c* and the reparation is not done during the term, the Action lyeth againſt the Sure-ty without any requeſt made to the Principall, otherwiſe it is, where the thing may yet be performed, 40 *E.* 3. 6. *Covenant* 16.

XII. *Covenant againſt the Husband and Wife, and by them during the Coverture.*

LEaſe to the Husband and Wife reſerving rent, and they Covenant to make ſuch ſecurity as the Leſſee ſhall deviſe, and he would have a Fine which they do not performe: It is holden that the Wife is not bound thereby, *&c.* 45 *E.* 3. 11. *Covenant* 18.

XIII. *The forme of the Writ of Covenant.*

COvenant againſt a Surety, and the Deed was, That the Principall and *W.* the Pledge had bound themſelves, and either of them: And the Writ was *Precipe W. Fidejuſſor, &c. quod teneat, &c.* between the Plaintiffs and the Principall, and the Writ was holden naught, and the which did ſuppoſe the Covenant betwixt the Plaintiff and Defendant, *P.* 39 *E.* 3. *Covenant* 15. 39 *E.* 3. 9.

The Writ and Deed was of many Covenants, but in the Declaration it is ſufficient to declare of one broken, 40 *E.* 3. 6. *Covenant* 16.

A Writ to hold Covenant of all the Land in *D.* without expreſſing the acres, & certain quantity, and therfore the Writ abated, 46 *E.* 3. 3. But it was *Vi.* 43 *E.* 3. 37.

holden

holden good, 47 *E.* 3. 3. But otherwiſe it is of a Covenant to levy a Fine.

In Covenant to levy a Fine, and another Covenant to enfeoff, in which caſe a generall Writ ſhall be according to the Deed, *M.* 10 *H.* 13. 6.

DISCLAIMER.

I. *What Tenant may diſclaime, what not.*

THE Lord may diſclaime in the Seignory when he is charged with Acquittail onely by reaſon of the Seignory, 14 *E.* 3. *Meſme* 7. by *Shard. vid.* 44 *E* 3. 2. by *Finchden.*

Lord, Meſme, and Tenant, the Lord avowes upon the Tenant, yet he may diſclaime, for he is not Tenant to the Lord. But he may ſay, that he holdeth of *I. S.* the Meſne by ſuch Services, without that, that be holdeth of the Lord immediatly as he hath counted, 9 *H.* 6. 25. *per Curiam.*

If the Donor joyne with the Donee in ſuch Avowry, they cannot diſclaime: So where an Abbot is Meſne, and joynes to the Tenant, they ſhall not diſclaime by *Genny*, which *Littleton* and *Nele* granted, 12 *E* 4. 17. See 38 *E.* 3. 26. *Meſne* 19. That he in the Reverſion did diſclaim in a Writ of Meſne brought by Tenant in taile.

Vi. 22 *E* 4. 47. Lord, Meſne, and Tenant, the Meſne cannot diſclaime, for he is not Tenant of the Land, and he ſhall not looſe the Tenants Land, by 12 *E.* 4. 17. 16 *H.* 7. 2. 11 *H.* 7. 14. 21 *E.* 4. 3. And by ſome *quære*, if the Meſne and Tenant joyne, if they may diſclaime; But I conceive it is good, and it ſhall be the diſclaimer of the Tenant, and thereupon a VVrit of right of Diſclaimer lyeth, yet there is no privity betwixt the Lord *Paramount* and the Tenant, 21 *H.* 7. 14. by *Keble.*

A Pernor of the Profits, nor *Ceſtuy que uſe*, ſhall not diſclaime, for they are not Tenants of the Lands, 11 *H.* 7. 14. and ſo is the opinion of *Priſot*, 36 *H.* 6. 34. for no Diſclaimer ſhall be in prejudice of others, *viz.* the Feoffees.

An Abbot ſhall not diſclaime, nor an Infant ſhall not diſclaim, the huſband ſhall not diſclaime for his wife, 33 *H.* 6. 27. & 34 *Priſot*, *vi.* 10 *E.* 4. 2. 4 *H.* 5. *acc.*

Quo

Quo Warranto was brought againſt a Biſhop, he diſclaimed in the liberties: And *per Curiam*, this Diſclaimer ſhall bind him and his Succeſſors to claim the liberties afterwards, 6 *E.* 3. *Br. Diſclaimer* 47.

If one avow upon his Tenant according to the Statute of 21 *H.* 8. the Tenant ſhall not diſclaime; contrary if he avow upon his Tenant at the Common Law, 28 *H.* 8. 20. by *Fitzherbert.*

II. *In what Writs Diſclaimer doth not lye, and in what Writs it doth lye.*

IN a *Per quæ ſervitia*, no Diſclaimer lyeth, becauſe he demands by the Writ no Lands, 8 *E.* 4. 2. And note by *Br. diſclaimer* 49. 6 *E.* 2. A man ſhall not diſclaim in a *Nuper obiit* as to the Land, *vi.* 8 *E* 2. *Aſſiſe* 416. A man ſhall not diſclaime in Aſſiſe, nor in Dower, nor in any Action where no Land is demanded, *vi.* 13 *H.* 7. 27. contr. by *Keble.* And ſee 42 *E.* 3. *Age* 33. where it is admitted, that Diſclaimer lyeth in a *Per quæ ſervitia.*

In a *Per quæ ſervitia*, no diſclaimer ſhall be, but the Defendant may ſay, that he held not of the Conuſor, the day of the Note of the Fine levied, 11 *H.* 4. 47. 12 *E.* 3. *Diſclaimer* 13. yet ſee 33 *E.* 3. *Diſclaimer* 31. That in a *Per quæ ſervitia* againſt a Prior, he ſaid, that he did not hold of the Conuſor, the day of the Note of the Fine, and the Diſclaimer was admitted.

In a Writ of Meſne, the Defendant may diſclaime in the Seignory againſt the Plaintiff, which is not denied, 44 *E.* 3. 2. *tamen quære.* See 14 *E.* 3. *ſ. Meſne* 7.

In a Reception the Plaintiff may diſclaime, but that is not where the Defendant doth avow the taking for another cauſe, as appeareth by 47 *E.* 3. 7. and *Fitz. Diſclaimer* 20.

In a Writ of Entry in the *Quibus* of a Diſſeiſin of the Plaintiff or his anceſtors againſt two, one of them would have diſclaimed, and was not admitted, becauſe the Plaintff did ſuppoſe him to be the wrong doer, 4 *H.* 5. *Diſclaimer* 27.

In a *Ceſſavit* the Defendant ſhall not be ſuffered to diſclaim, but he may ſay, that he doth not hold of him, *temp. E.* 1. *Diſclaimer* 29.

In a Writ of Cuſtomes and ſervices the Defendant may diſclaim, ſo in Aſſiſe of a Rent, but in a *Ceſſavit* Diſclaimer doth not lye by *Keble.* In a *Formedon* in the Diſcendor, the Tenant may diſclaim, and the Demandant may hereupon enter, as is holden, 13 *H.* 7. 27. *vide* 21 *E.* 3. *Droit* 72. But ſee it agreed, 16 *H.* 7. 1. by all the Juſtices but *Vavaſour*, that the Tenant may diſclaim in a *Formedon*, and *Cui in vita*, and in all other actions where a man ſhall not recover damages, but where Damages are to be recovered, there the Plaintiff may award him Tenant, but *prima facie*, the Diſclaimer is good as it is agreed, 16 *H.* 7. 1. by all the

Juſtices

Juſtices and Serjeants, and note although he doth averre that he is Tenant, yet notwithſtanding he may after waive it, and may enter, and ſhall not be eſtopped, 33 *Aſſ. Eſtoppel* 141.

III. *VVhat things follow upon a Diſclaimer, and the Effect and Nature of it.*

WHen a *Pracipe* is brought againſt two, and one of them doth diſclaim, the intereſt is veſted preſently in the other; the reaſon is, becauſe the Law doth intend that they are both in by one joint Feoffment, and then although the one onely takes the Livery, yet the other is as well Tenant as he, untill he doth diſagree in a Court of Record, and then upon his diſagreement, all ſhall be in the other by the Feoffment before made: and note, that *Schard* ſaid further, that if they be Jointenants by Diſcent, or by Fine, that they cannot diſclaim, but yet he conceived they might waive the Diſcent, if he ſaid the Demandant might ſhew the Diſcent, and counterplead the Diſclaimer, but note by *Fitz.* in abridging the caſe, that although one of them which are in by Diſcent may diſclaim, yet that ſhall not veſt the Land in the other, but the Demandant ſhall have Judgement, *quia nihil dicit*, 95 *E.*3. *Diſclaimer* 23.

Lord and Tenant, the Tenant diſclaims in Avowry, yet the Tenant may have a Writ of Right of Ward, and a Writ of Cuſtomes and ſervices, for by my Diſclaimer my Right is not gone in fact, but at my Election, but as unto the poſſeſſion in an Aſſiſe or Avowrie, the ſame is gone; but *Schard* and *Wylby* ſaid, that my Seignory is extinct for the whole, and I am forced to my Action for the Tenancy, 34 *E.*3. *Diſclaimer* 24. but of the firſt opinion, and againſt *Schard* and *Wilby* is the opinion of *Bryan*, *Townſend*, and *Keble*, 16 *H.*7.1. *viz.* that the Lord is out of poſſeſſion of the ſervices, and nothing remains but the Right of the Seignory to have Eſcheat and the like, and Aſſiſe, *Ceſſavit* and ſuch Writs of poſſeſſion are gone, but *quære* of that, if it be not betwixt the ſame parties, for if the Lord dieth, and afterwards the Tenant dieth, his heir within age, the heir of the Lord ſhall have the wardſhip of the heir of the Tenant, for the Eſtoppel ſhall not go to the heir, but onely betwixt the parties to the Avowry, and I conceive that the heir ſhall not have a Writ of Right for Diſclaimer made to the Father, 27 *H.*6.2.

ui Danvers nd Vavaſour eld, that the Seignory is not gone, for that it is no Eſtoppel, but that he may have an Aſſiſe.

In a *Quo Jure* of a Common, the Tenant doth diſclaim, the Common is extinct preſently, ſo of a Rent charge and the like, as it ſeems by 8 *R.*2. *Sthatham*: *Diſclaimer.*

Note, there is a great difference in the Diſclaimer of the Tenure, and the Diſclaimer in the Tenancy; for if one do diſclaim in the Tenure, this diſclaimer goeth in Bar of the Rent and ſervices, and for that he ſhall have *Quid pro quo*, and for the ſame gives him an Action to demand the Land

Land by a Writ of Right *ſur Diſclaimer* and the ſame goes alſo in Barr of damages, which are but acceſſories to the principall, but upon a Diſclaimer in the Tenancy, if it be in ſuch an action in which damages are to be recovered, there he may award him Tenant to have benefit of them, therefore the Diſclaimer there is no barr, and if it be in ſuch an Action, in which no damages are to be recovered, there the party may enter, by *Keble*, in 16 *H* 7. 2. *quod nota*, See *Lit.*155. for *Remitter* a good Caſe, and *quære* if he cannot enter and be remitted, whether he may recover damages. It ſeems by 33 *Aſſ. Fitz. Eſtoppel* 141. he may waive the averment and enter, and then it ſeems there is no difference, for the judgement is all one in both Caſes.

In a *Præcipe* againſt two, the one doth diſclaim, the other pleads non-tenure, nothing ſhall veſt in him by the Diſclaimer, but Judgement ſhall be given (as it ſeems) *Quia nihil dicit*, 36 *H.*6.28. contrary, as it ſeems, if one make default, 33 *H.*6.53. but in the firſt caſe the Demandant may enter *per Curiam.*

Eſpeciall Diſclaimer.

A *Præcipe* is brought againſt two, one made default after default, and his default was recorded, the other ſaid, that the Demandant held the Land of him, and ſaving his Seignorie, he diſclaimed in the Tenancy, for which cauſe the Demandant did recover the whole againſt him who made default, 33 *H.*6.53.

A man leaſeth to one for eight years, upon condition that if he do not pay 10 l. within the firſt year, that then the Leſſee ſhall have Fee, and in a *Præcipe* brought againſt the Leſſor, he durſt not diſclaim for looſing of the benefit of the condition, and therefore *quære*, if he might not have diſclaimed, with a ſaving of his Condition, 12 *E.* 2. *Fitz.* ſo *voucher* 236.

In a *Præcipe* brought againſt husband and wife, the husband as to him did diſclaim in the Land, ſaving to him a Rent charge, and as to the wife pleaded non-tenure, 36 *H.*6.28. by *Fitz. Diſclaimer* 9. *Quære*, for it is not ſo in the book at large.

In a *Præcipe*, the Defendant vouched a Biſhop by reaſon that his Predeceſſor and the Chapter gave the Land to him in tail, and the Biſhop would have diſclaimed, ſaving his ancient ſervices, and could not be admitted ſo to do by reaſon of the Reverſion, for none other ſervices ſhall be intended, but thoſe onely, although that the Predeceſſor did diſſeiſe the Tenant who held of him by certain ſervices 40 *E.*3.27.

Vide 12. *E.*3. *Diſclaimer* 13. *acc.*

Vide 10. *E.*4 2. 12 *E.*4.16. 13 *E.*4.6.

Where the Diſclaimer of the husband ſhall bind the wife, where not.

SEe 9 *H.*6. 52. by *Martin*, the husband may prejudice his wife as in Diſclaimer in Avowry, or in claiming Fee in a *quid Juris clamat*, and there the wife is without remedy.

In Avowry upon the husband and wife, they diſclaim and well, *per Curiam*, 35 *H.*6.10. of which *Brook* makes awards, for 10 *E.*42. The opinion of the Court is contrary, for thereby the Land of the wife ſhould be loſt, 21 H.7.20. agrees to the book of 10 *E.*4. See 22 *E.*3. *Diſclaimer* 14.

In a writ of Entry brought againſt the husband and wife, and a third perſon, the husband did diſclaim for him and his wife, and the Diſclaimer was admitted.

In a *Mortd'anceſtor* againſt the husband and wife, and a third perſon, the husband did diſclaim for the wife, and vouched over, *vide* 6 *E.*2.*br. Diſclaimer* 50.

In a *Præcipe quod reddat*, the husband appeared and the wife made default at the grand Cape, the husband diſclaimed and the Diſclaimer admitted good in the abſence of his wife, 41 *E.*3. *Diſclaimer* 11. but ſee 32 *E.*3. *Diſclaimer* 25.

The Husband in that caſe cannot diſclaime for his Wife, for then ſhe could not after be received for the default of her husband, becauſe by the Diſclaimer ſhe ſhould be out of Court, and ſhe ſhould be diſinherited where ſhe is not examined: But I conceive that this Diſclaimer ſhall bind the husband onely, and that the Wife may have an Aſſiſe. And ſee 16 *E.* 3. *Reſc.* 102. that notwithſtanding the Diſclaimer of the husband, that the wife was received in a *Præcipe quod reddat.*

In 13 *E.* 1. *Fitz. Droit* 72. A Writ of Right was brought againſt husband and wife by an Abbot, and he ſhewed how that in a Writ of Cuſtoms and Services the husband and wife did diſclaime, and ſo he had right againſt the wife, and the wife was received upon the default of her husband, and joyned the Miſe upon the Diſclaimer, ſee if the Plaintiff had more right by the Diſclaimer then the wife had.

In a *Præcipe* againſt husband and wife, and two others, the husband and Wife did diſclaime, and the two others did vouch; and it was admitted, 34 *E.*3.*voucher* 315.

The husband ſhall not diſclaime for the wife, nor the wife for the husband, for nothing can veſt by the Diſclaimer, becauſe each is Tenant of the whole, as it was agreed in a manner in 14 *H.*4. 18. yet ſee 32 *E.*3. *Fitz. voucher* 102. That the husband did diſclaime for the wife, and it was admitted, he taking upon him the entire Tenancy, and therewith agrees, 22 *H.*6.2.

Where one ſhall diſclaime againſt him who hath but a particular Eſtate, & e contra.

IN a Replevin, the Defendant doth avow the taking upon one *I.* as upon his very Tenant, which *I.* joyned to the Plaintiff and diſclaimed: For which cauſe the Defendant ſhewed, that *B.* was ſeiſed of the Services, and granted to him in taile, and *I.* attorned, for which cauſe he prayed Judgment if he ſhould diſclaime, whereas we are but Tenant in taile, and the other pleaded his Avowry to eſtop him, for that he avowed upon the other as upon his very Tenant, 3 *E.*3. *Itin. North. Fitz. Diſclaimer* 17.

It is holden, that Tenant in Frank-marriage ſhall not have a Writ of Right upon Diſclaimer; But if he in the Reverſion joyne, the Tenant may diſclaime: So if a Diſclaimer be againſt Tenant in Dower, or Tenant by the Curteſie, they may pray in aide of him in the Reverſion, and then the Diſclaimer may be well enough, 2 E.2. *Fitz. Droit* 28.

The Defendant avowed as Lord in taile, the Plaintiff would have diſclaimed, and was not ſuffered; for Tenant in taile ſhall not have a Writ of Right *ſur Diſclaimer*, 13 H.7.14. But if Tenant in taile bring a *Formedon* then the Tenant may diſclaime, 13 H.7.14. & 16 H.7.1.

A man ſhall not diſclaime againſt a Termor in a Seignory in a Repelvin, 4 *H.*5. *Br. Diſclaimer*, 36.9 E.4.32.

Diſclaimer after Confeſſion, or Homage taken.

NOte by *Needham*, If one do acknowledge the Avowry, yet in another Avowry he may diſclaime, 2 E. 4. 16 And yet ſee by the Book, 50 E.3.23. Where a Biſhop brought a *Ceſſavit*, and the Tenant did confeſſe the Tenure, and tendered the Arrearages as the Demandant counted, the ſame is an Eſtoppell for Diſclaimer afterwards in another *Ceſſavit*, or in a VVrit of Cuſtomes and Services.

If a man be vouched becauſe of Homage received of his Anceſtor, he may diſclaime; but contrary if he hath received Homage himſelf, *vi.*47 E. 3 *voucher* 270. *vi. Litt.* in his Chapter of Homage Anceſtrell 33.

Note, 27 H.6. *Diſclaimer* 28. that he in the Reverſion ſhall not diſclaim; where he cometh in by voucher, by reaſon of a Reverſion, and ſo is it holden in 40 *E.*3.27. where a Biſhop was vouched by force of a Reverſion in him, and ſee 10 H. 7. 10 that he in the Reverſion who made the Leaſe ſhall not diſclaim, otherwiſe it is of his Grantee, by *Frowick*.

In a *Præcipe quod reddat* againſt one, he vouched two to Warranty by reaſon of the Reverſion, and the one of them would have diſclaimed, and

there the Diſclaimer (as it ſeemed) was admitted, but the Court was in doubt how the Reverſion ſhould veſt in the other, 33 *E.* 3. *Diſclaimer* 21.

In 8 *E.* 3. 26. Tenant in Tail brought a Writ of Meſne againſt him in the Reverſion, and did not ſhew the Deed of acquitail, but onely bound him in reſpect of the Reverſion, and it was holden that he might diſclaim well enough, but if he had ſhewed forth the Deed, he could not have diſclaimed, *quod nota*, for the benefit of the Aquitail.

In 17 E. 3. *Quid Juris clamat* 26. It is holden, that he in the Reverſion may diſclaim when he is vouched, if it be not in caſe of Tenant in Dovver, and ſo ſeems to be 47. E. 3. *voucher* 271. vvhere in Dovver the Tenant vouched one as heir, by reaſon that he held of his Father, and alledged Seiſin in the Father of Homage, and that he was alwayes ready to render Homage, and becauſe he did not ſhew a Deed, therefore it went without day, *quod nota.*

In 14 E. 3. *Garranty* 32. It is holden that the heir of him in the Reverſion being vouched may diſclaim, ſo of the Grantee of the Reverſion, but note that the Grantee of the Reverſion ſhall not be vouched by the Exception in the Statute of 32 *H.* 8. *of Conditions.*

Note, It is ſaid by *Littleton* 33. wherewith agrees the books of 10 *E.* 4. 2. 12 *E.* 4. 16. 13 *E.* 4. 6. That if an Abbot or a Prior be vouched by force of Homage anceſtrell, although he never took Homage, yet he cannot diſclaim in ſuch caſe, nor in no other Caſe, becauſe they cannot deveſt a Fee which hath been veſted in their houſe, yet ſee 45 *Aſſ. Br. Diſclaimer.* An Abbot purchaſed Land rendring 10 l. Rent, whereas the Land was but of the value of 5 l. *per annum* and died, his Succeſſor diſclaimed and died, and an Aſſiſe was brought againſt the ſecond Abbot, and he pleaded the Diſclaimer of the Predeceſſor and of himſelf, and the Plea was allowed.

Diſclaimer againſt the Lord by the Meſne and Tenant, and for the Lord againſt the Meſne.

IF the Lord Paramount do avow upon the Meſne, and he joyns to the Tenant, and the two diſclaim, the Writ of Right *ſur diſclaimer* ſhall be brought againſt the Tenant of the Land by *Finchden*, and by *Winchingham*. If a man diſclaim and dieth, and his heir is in by diſcent, or a ſtranger, the Writ lyeth againſt one of them, or againſt him onely who is Tenant of the Land, and note there, that the Tenant *Paravail* ſhall diſclaim, and yet he is not Tenant to the Lord, and there by *Kirton*, the Diſſeiſor

ſor may diſclaim, and yet he is no Tenant, 45 *E.* 3. 17. and 35 *E.* 3. *Diſclaimer* 22. It is holden that the Writ lieth againſt the Tenant *paravail, vide* 14 *E.* 3. *Fitzh. Meſne* 7. *by Shard, &* 8 *E.* 3 26 *Fitzh. Meſne* 10.

ENQUEST, AND EVIDENCE.

I. *Where an Evidence given contrary to the Iſſue, diſcharge the Enqueſt, and where, and what Evidences contrary to the Iſſue, and which ſhall not prove the Title, nor maintain the Iſſue.*

IN Aſſiſe Iſſue was joyned if the Plaintiff did purchaſe pendant the Aſſiſe *&c.* and he gave in Evidence that he took the Land upon Condition, that if the ſaid Defendant did make a Recognizance to him, he did agree to the eſtate, otherwiſe not, and that he did not make the Recognizance, yet the Writ abated, for that did not maintain the Iſſue, *M.* 10. *E.* 3. 50. *Aſſiſe* 163. It was coce ived it ſhould be otherwiſe, if the Condition were for to reenter, *Quare*, if the Defendant had entred *ibidem.*

And where upon a Feoffment pleaded the plaintiff ſaid, that he did not enfeoff *modo & forma*, and the Feoffment was found, upon Condition without Deed or by Deed, the ſame is againſt the Plaintiffe, *M.* 11 *H.* 43. *Feoffments* 41. *&c.*

The Counterplea of voucher ſhall be, that he nor his anceſtors had not any thing, without ſaying whoſe heir he is, yet if he be a younger ſon who is vouched as heir, he ſhall give the ſame in Evidence, and ſo was it, *P.* 12. *E.* 3. *Counterplea of voucher* 71. *T.* 10 *E.* 3. 30. *Counterplea of voucher* 63.

If a woman vouch as Tenant in Dower, the heir and the Demandant ſaith,

ſaith, that he was ſeiſed in Fee jointly with her husband, and ſaith, that he hath not, that he can endow her, and giveth in Evidence an eſtate for life with the husband, the ſame is againſt him, *M.*12 *E.*3. *Counterplea of Voucher* 70.

In *Parco fracto* the Defendant pleadeth *Non quibus*, and gave in Evi-
18 *H.*6. 33. *If the Iſſue be matter in Law, he ought to ſhew it ſpecially.* dence that the plaintiff had not a Park by Preſcription, nor by Grant, it was good, *M.*18 *H.*6.22. Action upon the Statute 4. But if in Treſpaſſe or Debt upon not guilty, or that he owed him nothing, pleaded, he ſhall not give a Releaſe in Evidence, ſo if he plead not guilty in Maintenance, he ſhall not give a lawfull Maintenance in Evidence, nor upon that Plea in Treſpaſſe, he ſhall not give a licenſe in Evidence, but a Leaſe or a gift he may; and if he plead not guilty in an appeal, he ſhall not give in Evi-
10 *H.*7. 15. 21. *H.*7.28. 19 *H.* 8. *a.* 21 *H.*6.33. 21 H. 6.2. per Marckham *he muſt plead the ſpeciall matter.* dence that he did it *ſe defendendo*, nor that the dead ſtole Deere there, and that he is keeper, *T.*12 *H.*8.1.

If in Reſcous by the Lord the defendant plead not guilty, he ſhall not give in Evidence that he doth not hold as the plaintiff hath declared by *Vavaſour* and *Bryan*, and if he ſaid, that nothing is behind in Avowry, he ſhall not give in Evidence that he doth not hold of him, and *Vavaſour* alledged a Judgement, that he who in detinue ſaid, that he did not de-
20 *H.*7.11. *and* 28. 16 *H.*7.15 *acc.* tain, could not give in Evidence, that he had the thing of the Plaintiff as a pledge for money not yet paid, *&c. T.* H.7.3.

In an Aſſiſe upon never ſeiſed, ſo as he could be diſſeiſed pleaded, the Plaintiff did alledge that he as Sonne entred, becauſe the defendant did conſent to Raviſhment, the heir may well give in Evidence, proving that he did not aſſent preſently, denying the Entry of the Plaintiff, if not by wrong *&c. M.*5.*E* 4.7, *&* 8.

A Writ of Entry in the nature of an Aſſiſe, and counted of Seiſin, *ut de libero tenemento*, and by Evidences it appeareth that he hath fee or tail, this is good, for if tail, he ſhall not ſhew the diſcent in his Count in this Writ, *P.*33 H.6.14. *Entry* 24.

In Aſſiſe Feoffment pleaded, the Plaintiff ſaid that he did not enfeoff
13 *E.*4.4. *acc.* *modo & forma*, and the Deed found, and that the Attorney which ought to have made Livery upon Condition, made it without Condition, the ſame well proves the Iſſue for the Plaintiff, but upon a Feoffment made upon Condition without deed, he ought to ſay that nothing paſſed, *T.* 11 *H.*4.3. for he cannot give in Evidence the Condition, where he hath not the Deed, and upon the matter he may ſay that he did not enfeoffe.

But *Priſot* held, that if one intitleth himſelf by a Deed in which there are diverſe Conditions, and he doth not ſhew the Deed, nor ſpeaketh of the Conditions in pleading, he ſhall not have advantage thereof in Evidence, for the Court ſhall not conceive it to be the ſame deed which was granted, *M.*31.*H.*6. *Feoffments* 103.

It was holden, that he who pleads a Feoffment by Deed, where the Plaintiff ſaith, that he did not enfeoff *modo & forma*, ſhall not give

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in Evidence a Feoffment without deed, nor a Feoffment by another deed, no more then if hee had pleaded that nothing paſſed, or that he did not enfeoff by deed, *P.* 13 *E.* 4. 4. *Iſſue* 129. So upon That he did not give *modo & forma*, he ſhall not give another gift in Evidence, but contrary by *Finchden* and *Thorp*, where one pleads a grant by deed of a thing which paſſeth without deed, and that he may well give in Evidence a grant without deed, or by another Deed, although that the other doth traverſe that he did not grant by the Deed, becauſe the Grant and not the deed is the effect of the iſſue, 41 *E.* 3. 1.

The defendant pleaded a deed of the Plaintiff in Barre, who alledged the ſame to be by *Dureſſe* at *D.* and Evidence was given that the defendant never came at *D.* yet it was found for the Plaintiff, becauſe the place was not in iſſue, 14 *H.* 4. 35.

In debt upon arrearages of accompt, the defendant pleaded that he owed him nothing *modo & forma*, and gave in Evidence that he never made ſuch Accompt, and holden good if true, or if he hath paid him, *P.* 20 *H.* 6. 24. *Iſſue* 68. but he might have pleaded that there was no ſuch Accompt.

In Waſte upon no Waſte pleaded, he gave in Evidence that the Plaintiff did grant to him that he might cut down &c. to repair, and ſaid that the houſe was ruinous, for which &c. and the Evidence was held contrary to the Iſſue, and the Plaintiff did recover, as if he had given in Evidence, a Licenſe to do waſte, but he might have given Evidence that it was by thunder, or by the Kings enemies, by *Brook*: *Quære* of that difference, 12 *H.* 8. 1.

Avowry for fealty and Rent, and upon Out of his Fee pleaded, he did alledge Seiſin of the Rent, that doth not prove ſeiſin of the Fealty, ſo nor ſeiſin of ſuit by *Fitzh.* for this is is contrary to the Avowry, ſuppoſing the tenure by fealty and Rent. *Baldwin*, it proves that it is within his Fee, and that is the iſſue, *Fitzh.* contrary, yet the party did paſſe that, and ſaid that the ſuit was for another Cauſe, *T.* 27 *H.* 8. 21.

Upon, Nothing paſſed pleaded, *Bryan* thought that he could not give in Evidence, that it is not his Deed, for that is confeſſed in the Plea, *M.* 5. *H.* 7. 13. but he himſelf and *Keble* contrary afterwards, becauſe if it was not his Deed, nothing paſſed by it, ſo both ſtood together, 5 *H.* 7, 8.

2 *Ma. Dyer* 111. *In Debt upon an Obligation, defendant pleaded* Non eſt factum, *and gave in Evidence that alſo the money was paid, that the plaintiff pulled off the ſeal, and holden good. Evidence to maintain the iſſue.*

A Bill of 200 l. the Plaintiff did ſuppoſe that he had bought ſo many cloaths for 400 l. the Defendant waged his Law, and by the Cuſtome of *London* he ſhall be ouſted of his Law by any paper ſealed by the defendant, teſtifying the Contract, and the paper ſhewed was, that he bought the cloaths for ſo much, upon condition that he ſhould take two precious ſtones, and certain rings for part, and ſhould have the reſt in money, and it was holden no Evidence, for it cannot be intended the ſame Contract, *M.* 39 *H.* 6. 36. *Debt* 68.

And where in an Aſſiſe of Land, the Defendant pleaded a gift in Tail,

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the remainder over by deed enrolled, and the deed is of an Office, the ſame doth not maintain the iſſue, for in a Formedon of Land, if he ſhew a deed of an Advowſon, it is naught, although he need not ſhew any Deed, *F.* 1 *H.* 7. 28. *Monſtrance defaits* 110. agrees, if a deed proves Tail where the partie claims fee, or if the Deed belong to another, and not to him, *M.* 41. *E.* 3. 23.

Treſpaſſe for taking away Timber and boughs of trees felled, Defendant pleaded not guilty, and gave in Evidence a Cuſtome that the Tenants in *Boſcagio Manerii* uſed to have Eſtovers to burn *in neceſſario focali in terris & tenementis*, and entitled himſelf to a houſe and Lands, and becauſe the Evidence given in was, that the Cuſtome did extend to Lands and Tenements, to which eſtovers cannot belong, and he entitled himſelf to a houſe and Lands, it was adjudged that the Evidence did not maintain the Iſſue, *M.* 12. *Jur. acc. Co.* 1. *B. Eveſ. de Chicheſter Stodwicks Caſe.*

So vide 14 *Eliz. Dyer* 305. *A man pleaded* Ne unquam Executor, *and gave in Evidence an adminiſtration and good.* Quære, *if he ought not to have pleaded it in abſence of the writ.* 9 *E.* 4 33. *T.* 16. *H.* 7. 11. *acc.*

Executors pleaded, that they had nothing in their hands, the other gave in Evidence that they had redeemed a pawn of the Teſtators, but the ſame was with their own monies, for which cauſe their Iſſue was held good, 20 *H.* 7. 2. *&* 4.

Treſpaſſe, the Defendant juſtified for Common for 10 beaſts by Preſcription, and gave in Evidence Common *per vicinage Preſcription*, and it was holden that the ſame did not maintain their Iſſue, 13 *H.* 7. 13.

So if a man claim Common generally, and give Evidence of Common appendant, if they find for him, an Attaint lyeth: ſo if he entitle himſelf to a Rent charge, and gives Evidence for a Rent-ſervice, 39 H. 6. 17, *&* 18. *vide M.* 12 *E.* 3. *acc.*

But in a Writ of Entry, of ten acres of Meadow upon a Diſſeiſin to the Predeceſſor, they were at iſſue upon the diſſeiſin, and the Evidence was, that in the Seiſin of the Predeceſſour it was a Marſh covered with water, and made Meadow afterwards by the turning of the Water by the Tenant, and the Writ was not abated by that Evidence, H. 33 *E.* 3. *Entry* 80. *See* 1 H. 7. 28.

II. *Where the Jury ſhall take notice of a thing done in another County, or of a ſpirituall thing or of a Record.*

Aſſiſe of a Rent was taken by default, and a deed was given in Evidence of a Rent bearing date at *L.* out of the County, yet the Aſſiſe was taken 29 *Aſſ.* 6. *Aſſiſe* 27. 6. 7. H 7, 8. *Endictment* 24. So where the Tenant pleads to the Aſſiſe, the plaintiff gave a forreign Releaſe in Evidence, 9 *E.* 4 49. *Scire facias* 50.

Annuity againſt a Parſon, who pleaded a Reſignment before *&c.* at *L.* but of the County it was holden, that he ought to conclude, and ſo not

not Parſon, ſo of a divorce pleaded in anoth r County, he muſt conclude his wife, and the ſame ſh ll no be tried where the Writ or where the Church is, and upon the divorce or reſignment given in Evidence the Jury ſhall take notice of it, although it be a ſpirituall thing in a forr in County, and the Jury may take notice if the Defendant took he profits, 7 *E.*4. 16. *Breif* 161. And the Reſignment is but Evidence, of which the Jury ought to take notice, 9 *E.* 4.49.

Finchden ſaith, in an Aſſiſe of a Rent where the Iſſue is, whether the charge is by deed, if the Land be not directly, but by a mean charged by the deed, the Aſſiſe ſhall not be adjourned but taken there, 43 *E.*3. 2. But ſee if the Deed of the Anceſtour be pleaded againſt an Infant, although the Infant ſhall not anſwer to it; yet it was holden, that the Aſſiſe ſhall be removed to enquire thereof in a forrein County, and if the Juſtices do enquire thereof by the Aſſiſe, the ſame is Error 21 *Aſſ.* 8. *Error* 79.

A deed of Feoffment dated in a forrein County was tried by the Aſſiſe, 2 *E.*3.3.

Debt againſt Executors who pleaded, that they never were Executors, nor Adminiſtred as Executors, and Evidence was given, that the Teſtator gave them the goods by deed in another County, the Jury muſt find the deed upon pain of an attaint: So after the Miſe joyned in a Writ of Right, they found a forrein Releaſe given in Evidence, upon pain of an attaint, and note the ſame is no Admniſtration. *M.* 9 *E.*4.40. *Executor* 36.

Vide 18 *E.*4. 12. *That the Jurors are to take notice of a Condition upon pain of Attaint, where it appeareth upon Evidence,* Nul tort, nul diſſeiſin *pleaded.*

Avowry for homage, and the taking was in *Middleſex*, the Plaintiff did alledge tender of the homage at *B.* in another County, and iſſue was upon the tender, and the tender found by a Jury of *Surrey*, to the damages, *&c.* and it was ſaid that damages could not be aſſeſſed by thoſe of *Surrey* for a taking in *Middleſex*, but the contrary was holden by the Court, and the matter was affirmed upon a writ of Error brought, yet in a plea of land upon a releaſe in a forrein County pleaded, and found there they ſhall not enquire of damages, but a writ ſhall iſſue for them where the land is, becauſe they are the principall, but in this action the damages are the principall, 21 *E.*3.56. *Enqueſt* 7. ſo upon a forreine releaſe pleaded in treſpaſs, the Jury ſhall tax the damages, 7 *H.*7.8. and *Thorpe* ſaid, that in all caſes, where the Enqueſt have power to enquire of the principall, they have power to enquire of the damages, 44 *Ed.*3.6. But ſee 11 *H.*4.56: 19 H.6.8. That in the caſes before ſaid the Juſtices in their diſcretion may award a Writ to enquire of the damages.

Treſpaſſe of aſſault and Manaſſe in *Norfolk*, by reaſon whereof he could not go about his buſineſs in *Suffolk*, thoſe in *Norfolk* ſhall finde the damages in *Suffolk*, and if my receiver of three counties be beaten in one of them, I ſhall recover damages for the ſervice loſt in all the Counties; So if one detaineth my releaſe in one County, whereby I may looſe my Land in another County, *&c.* *M.*37 *H.*6.2 *treſpaſs* 8.

If a man ſaith, he is an alien, it ſhall be tryed here, and it ſhall be tryed here whether a man do convey to *Burdeaux* another ſhip then from *England*, and the Aſſiſe ſhall find a Releaſe in a forraigne county 7 *H.* 7.8.

In an Aſſiſe, the birth of a man alledged to be in an other county was to be tryed by a Jury of both countyes, and of the one County there appeared enough to make the Jury, and of the other County there appeared but one, yet the Jury ſhall be of both Counties, for one County cannot find things done in another County, and therefore the one which appeared of one County was joyned with the others who appeared of the other County, to try if there were more in the Town of the ſame Jury, for *Winch.* ſaid, that Jurors of one County ſhall take notice of the perſon of a man of another County, becauſe he is removeable, as that one of another County hath done a Treſpaſſe here, but they cannot find a thing done in another County and give Judgement, although *Kirton* did not agree to the ſame, *M.* 48 *E.* 3. 30. 30 *Aſſ.* 42. *Enqueſt* 41.

A man was endicted in *Middleſex* for procuring of *I.S.* there to kill *J.D.* who killed him at *Barwick*, and the Juſtices ſent to *Barwick*, to know if the Juſtices there had any endictment there againſt *J.S.* there thereof, *H* 9 *E.* 4. 48. *Coron.* 33.

And ſee, that a man endicted in *London* before Coroners of a ſtroke in *Middleſex* whereof he died in *London*, and it was holden void, for thoſe of *London* ſhall not enquire of a ſtroke in *Middleſex*, and in an Appeal the Triall ſhall be by both Counties, and if they cannot joyn, it hath been the uſe to bring the body where the ſtroke was, and there to enquire of it, 6 *H.* 7. 10. *Endictment* 23. but *Huſſey* and *Keble* were clear of opinion, That the party might be endicted where the ſtroke was, for that is the principall, and the death, but the Acceſſory, and he which hath notice of the principall, ſhall take notice of the Acceſſorie in another County 7 *H.* 7. 8. *Endictment* 24.

But Appeal ſhall be good, ſuppoſing that he ſtrook him in one County, whereof he died in another County, but an endictment ought to be in one County onely, 4 *H.* 7. 18 *Coron.* 60. and here ſhall be no joyning of Counties. But by *Huſſey* and *Fairfax*, endictment in one County of goods ſtolen in another County is void but an Appeal good in every County where they are carried, but Treſpaſſe ſhall not be found in another County, then where the taking was upon pain of Attaint, and therefore an acquittall in another County was no Plea upon an Endictment, *M.* 4 *H.* 7. 5. *coron.* 62. See *Stamford* 182. That this difference is not Law, becauſe he may be well endicted in every County and ſee the Statute of 2 *&* 6. *cap.* 24. for the Triall in ſuch Caſes.

Preſentment in *Dale* before Juſtices in *Eyre*, where the Nuſance was, and the Land drowned in another County, and it was good, but if the Defendant doth deny th. Nuſance ſuppoſed, the Preſentment & his Plea ſhall be

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ſent to the King, and then determined by Commiſſion, or before the ſame Juſtices upon enlargement of their authority. And *Scrope* ſaid, That if a man doth commit a felonie in one County, and is taken upon an Appeal of an Approver in another County; and the Approver appeareth before the Juſtices in *Eyre*, they ſhall proceed; ſo he thought if he dye in one County of a ſtroak given him in another County, 3 *E.*3. *Itin. North. Aſſ.*446.

In treſpaſs for breaking of his Cloſe, and cutting of his Wood, *&c.* and carries it away, to all but to the cutting the Defendant pleaded, Not guilty And as to the cutting, that the plaintiff commanded him at *N.* in the County, *&c.* And the cutting found for the plaintiff and damages aſſeſſed for that only, and he had Judgement for that. And note, they did not enquire of the damages in the other County for the other Treſpaſs, but a *venire facias* iſſued forth of thoſe where the Writ was; but not for the Coſts. *M.*33 *H.*6.55. *Judgement* 39.

Hody ſaid, that it is in their diſcretion to cauſe the Forein Enqueſt to enquire damages for the whole, or not; For if one Defendant makes default, and the other pleads a forein iſſue, they may award a Writ of Enquirie of Damages againſt him who made default preſently in the ſame County without making another Enqueſt to enquire of the ſame, and ſo it was done. And if 3. in Treſpaſs joyn ſeveral forein iſſues and every one is found for the plaintiff, and taxe intire damages, the Court may chooſe which of the Enqueſts ſhall ſtand for the damages 19. *H.*6 8. *Treſpaſs.*35.

Forgery of a falſe Deed was brought in *Kent*, ſuppoſing thereby that he was diſturbed of his Lands in *Kent*; and of his Tenements in *London*; and ſeveral iſſues, pleaded in *Kent* and *London*; and being found for the plaintiff in *Kent*, they taxed Damages for the whole Conditionally, that if he be found guilty in *London*; but they ſevered the Damages in *London* from thoſe in *Kent*; and alſo the Coſts. 21 *H.*6. 51. Vi. 37 H. 6. 3. acc. *where the Jurours in one county ſhall take Notice & enquire the Damages in another County in a Writ of Forgery of falſe deeds* See 44 E. 3. 6 acc. *in the caſe of Battery.*

Decies tantum, upon Not guilty pleaded, and Evidence given of their taking money where the Action was brought, *Brian* conceived, that if the Jurours certainly know, that the Defendants have taken in another County, and not here, that they cannot find him guilty, others contrarie, and that attaint lyeth upon that. As Aſſets in their hands pleaded in *D.* and the Evidence prooved the Aſſets in *S.* they found Aſſets. 22 *E.*4.19. And upon Not guilty in a Treſpaſs local in another County Attaint lyeth: not if the iſſue be in a treſpaſs tranſitory, as Battery, *&c.* 39 *H.*6.9 *Chocke* 9.9. *E.*4. 49 9 *H.* 6.63. but there *Paſton* and *Moyl* held the contrary in battery, and with them agrees *Huſſey* 4 *H.*7.5. and 6.

III. *Where the Jury ſhall take Notice of a thing done beyond Sea; and of a ſpiritual thing.*

Mortdaunceſter brought of the ſeiſin of *C.* his Mother, the Tenant ſaid that the Demandant had an elder Brother living; the Demandant ſaid, that he dyed beyond the Sea; the Tenant confeſſed that he went beyond the Sea, but ſaid that he was living there: and if that be not found, then he ſaid that *C.* did not dye ſeiſed, and it was found that the elder Brother was alive, and that *C* dyed ſeiſed, wherefore the Demandant did recover, ſaving the Right to the elder Brother, when he ſhall return. 13 E. 1. *Mortdaunceſter*, 47. And in Dower, the Tenant did averr that the Husband was alive at *Anignion* in *France*, and was received to prove it. *M.* 19 *E.* 3. Tryal 58.

In *Mortdaunceſter*, the Vouchee ſaid, that Demandant had another Brother, who was baniſhed, &c. who overlived the Aunceſtor; the Demandant ſaid, that at the time of the Abjuration ſuppoſed, the Brother took upon him ſuch a Habit, and went beyond Seas, without returning, and demanded Judgement, if the other ſhould aver that he did ſurvive, without alledging ſpecial matter; and the Aſſiſe afterwards taken at large, ſaid, that he was baniſhed in the life time of his Father, and took ſuch a Haven, and did not return, wherefore they did not know whether he was alive. And found the dying ſeiſed of the Aunceſtor, but did not know whether the Demandant was his next heir; but that was acknowledged by the party of the vouchee; wherefore the Demandant did recover againſt him in value. 25. Aſſ. 11. *Mortdaunceſter*, 28.

The Tenant in a *Mortdaunceſter* did confeſſe that the Demandant was next heir, ſaving that he had an elder Brother, who went beyond the Seas 18. years paſt, and did confeſſe, the dying ſeiſed; wherefore without further enquirie he had ſeiſin, *ſalvo jure* of the elder Brother *cum venerit*. 12 *H.* 3. *Mortdaunceſter*. 55.

In Aſſiſe, a gift in tail was pleaded to the Husband and Wife, and to the Tenant their iſſue; and that the Donor did releaſe: the Aſſiſe found the gift accordingly, but that there was a Devorce betwit them, & the heir of the Husband did enter who was plaintiff, to whom he in the Reverſion did releaſe, and nothing was ſpoken of the Devorce, but ſaid, that they found the releaſe which was not pleaded. *T.* 12 *E.* 3. *Verdict*. 31.

By a Commiſſion an Office that *T.* was born during the eſpouſals betwixt Coſins; and they devorced and married again by licence, and have iſſue, and ſo *E.* heir, and the Devorce was in a forrein County, and good, and he by Office a forrein releaſe ſhall be found, *Hank* was of opinion that they ought to ſend to the Biſhop to certifie if there was ſuch a Devorce. 7. H 5. 2. Verdict. 16.

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In Accoumpt before Auditors, and ſaid that he had delivered to the plaintiff ſo many Caskets with Jewels to the value in *Brittainie*, that he did accept of the Key, and afterwards at *D.* in *England* he did deliver him the Caskets with the Jewels, *&c.* and *Thorpe* was of opinion, that that which was done in *Brittain* was not to the purpoſe, if they were not of ſuch value in *England*, for the Common-law cannot trye it, but *Fitz.* doth not report that ſaying. H.41 *E.*3.3. *Fitz.* Accoumpt 23.

Where a Writ was to be abated becauſe the plaintiff was made a Knight pendant the Writ; It is no plea that he is beyond the Sea, and was, *&c.* nor that he was not within the 4. Seas made Knight, *&c.* but he ſhall plead that he is not Knight, &c & *quære* what ſhall be done if he were made a Knight beyond Sea for that doth appear. 7 H.6.17. Iſſue 46.

Note by *Huſſey* chief Juſtice, where an Action is commenced in the Spiritual Court, and upon that matter comes in Iſſue triable by our Law, yet it ſhall be tryable by their Law; as if a man ſue there for a Horſe deviſed, and a gift in the life of the Deviſor is pleaded, it ſhall be tryed there, *è contrario*, where the Action is begun here, and a ſpiritual thing comes in Iſſue, it ſhall be tryed here, as ability of a man dead. And where the Original begins in *England*, and the reſt is to be performed in another Realme, yet it ſhall all be tryed here, as a Contract to ſerve me upon the Sea, or beyond the Sea, or purchaſe of Bulls from *Rome*, the Action ſhal be brought here & tried. And if it be pleaded that one was born beyond Sea, and the other ſaith, that he was in *England* at *D.* he ſhall not traverſe, becauſe the other ought to maintain that he was born beyond the Sea, and traverſe the birth in *England*. *M.*1*R.*3 4. Tryal.29. *Vi.*15 *E.*4.15. That he who pleads performance Condition to bring Buls to ſerve in *Normandy*, &c the other ſhall aver that he was then at *D.* in *England*, without any traverſe, as of the birth before becauſe by ſuch traverſe it ſhould be tryed beyond Sea; And *Cateſby* ſaid, that if a thing to be done beyond Sea, cometh in Iſſue, it ſhall be tryed by proofes, *&c* See 15 *E.*4. *acc.*

And it is ſuffcient to ſuppoſe the Contract begun here, though it be falſe, if it begun not upon a Deed bearing date beyond Sea, 48 *E.*3.3. But if it be confeſſed to be all done beyond Sea, how it ſhall be then tryed, See 13 H.4.6. *C. Part 47. in Dowdalls caſe P.*2.8. *Eliz.* in *B. R. adjudg acc.*

The King brought a *Quare impedit*, & counted that the Church was void by miſcreancy and ſciſm of a Cardinal, *&c.* who was preſented to the Pope, *Belknap*, This Court ſhall take notice of that miſcreancy, for a Deprivation after an Appeal to the Court of *Rome* ſhall be tryed aſwell here in the Court of the King in ſuch Writ, as it were in the Arches. And if a man be adhering to the Kings Enemies in *France* or *Scotland*, it ſhall be tryed here where his Land is; and the Deprivation at *Rome*, or the miſcreancy ſhalbe tryed where the Church is, as it appeareth by the Judgement there. *M.*5.*R.*2. Trial 52. 48 *E* 3.3.11. *H* 7.16. C.L.1. *H* 261. *acc.* 6 *Ely. Dyer* 228 19 *E.*4 39 2 *E.*4.1.

Quare impedit by the King for temporalities void upon avoidance in creating one Biſhop of W. beyond the Sea, and good, for the ſpecial avoidance

dance ſhall not come in Iſſue, but generalie, that the Church voided, *P.* 19 *E.*3. Tryal 47. But if one who hath not Land adhereth to ye Enemies, or if the league broken be pleaded; or wool ſhipped otherwhere then at *Cales*, theſe ſhall be tryed by the Country in *England*, but *quare* in what County, for *Littleton* could not tell. H 19 *E* 4.6.

The Wife being received in a *Scire facias* brought againſt the Husband and Wife, ſaid that ſhe had a Coheir not named in the Writ, the plaintiff ſaid that ſhe was born at *Roos* in *Scotland* out of the Kings allegeance, the Tenant ſaid within the allegeance, and the Tenant was driven to ſhew the place of the birth, becauſe parcel of *Scotland* was within the Kings allegeance, and part out of his allegance; and the matter ſhall be tryed by the Rolls of the King, 42 *E.*3.2 *Brief.*551.

Debt the defendant ſaid, that the plaintiff is a Monk profeſſed at *D.* in *Normandy*; and it was not allowed without alledging him to be under the obedience of ſome in *England*, for reaſon of Tryal, *H.*12 *H.*4.16. *Nonability.*2.

IV. *Where Evidence ſhall not be given after the Aſſiſe awarded; And when after Enqueſt by default, and when after Iſſue he ſhall give Evidence to prove the point of his Writ, And what Evidences the Jury ſhall have with them.*

IN a *Mortdaunceſter* the Tenant was ready to hear the Aſſiſe; Now he ſhall not give in Evidence that the Plaintiff was born before the marriage, for he ought to have pleaded that, and by praying Recogniſance of the Aſſiſe, he did admit him to be mulier, *P.*12 *E.*3. *Mortdaunceſter*, *Vi.*12. *Aſſ.*3. *Baſtardy* 13. *acc.*

After the Enqueſt awarded by default in a *Quid juris clamat*, the defend. could not give any thing in Evidence 10 *E.*3.32. *Old N. B.* 175.

A Writ of Entire of a Common; The Tenant ſaid that he did not diſſeiſe; and when the Jury did appeare *Laycon* ſaid to the Demandant that he ſhew his Evidences for title to the Common; for it was not in the Writ; or how you were diſſeiſed, *P.*4 *E*4. *Entire* 34.

In Treſpaſs, they were at iſſue, and one part of fine was ſhewed to the Juſtices, and they ſaid that the Jury ſhould not have that part, for the party ſhall not have advantage thereof in pleading if it be not *ſub pede ſigilli*; but by the plaintiffs conſent it was delivered to the Jury 34 *H.*6.25. *Enqueſt.* 19.

A deed not ſealed ſhall not be given in Evidence to the Jury 26. *Aſſ.*4.

If the plainty deliver and Eſcrow in Evidence to the Jurours which was not ſhewed in Court, it is void, and the plantiff ſhall not have Judgement, although it were in affirmation of the former Evidence 10 *H* 4.10. 11 *H.*4.17. *Vide Enqueſt.*37. But the Jury after they are departed to a houſe together, may come back to ſee or hear Evidence of a thing where-

of

of they were in doubt at any time before their verdict given. *T.*16 H.8.5. It is agreed, that if they agree the ſooner by reaſon of ſuch eſcrowe, or Bill delivered them, that all is void. *H.*35. H. 6. Examination 17. And it is there ſaid, That the Jury ſhall be fined, if it be found upon their Examination upon their Oathes, *Vide* 14. *H* 7.30. *acc.*

V. *Where Evidence ſhall be of a thing before memory, and the Jury ſhall take notice of it.*

A Confirmation of King *Hen.*2. made upon his grant, which was before he was King is not pleadeable, becauſe before time of memory, yet ſuch debts may be given in Evidence, upon the general Iſſue, 12.H.4. *Avowrie* 58.

Annuity claimed by preſcription, The Defendant ſhewed that there was an agreement between the Predeceſſor of the Defendant and the Predeceſſor of the plaintiff without the Covent, that he ſhould have the Annuity, *&c.* without that, that he was ever ſeiſed before that time, time out of mind, *&c.* And ſhewed that that was in the time of *E.*1. and good. So he made the Jury take notice of a thing done in the time of *E.*1. *M.*20 H.6.3. *Preſcription* 6. the matter was in a Replevin. See 33 H.6.31. in an Annuity.

At the Common Law before the Statute, Preſciption to the Jury was, If they had not conuſans nor information to the contrarie, nor their Auncеſtors nor other perſon. So at this day if nothing to be ſhewed to the Contrarie; But the party may ſhew that the houſe out of which the Annuity is demanded by Preſcription, was erected in the time of King *John*, or after the time of *Richard* the 1. and ſo cauſe the Jury to enquire of a thing out of their remembrance. And note, that for that cauſe the plaintif would not ſhew the deed in Evidence to prove the Annuity. *P.*34. H.6. 36. See 19.H.6.75.

VI. *When Evidence ſhall be given upon an Enqueſt of Office.*

A Prior did recover in value; and the Sheriff delivered him more then he ought, forwith the vouchee had an Extent, and *ſicut alias* to extent both Lands, and the Prior the Tenant dyed, and the Succeſſor prayed that he might not be put out without Summons, *Malm.* upon this Writ the party may ſhew his Evidences at the day of execution of the Writ; and afterwards the Sheriff ſhall extend the Land. *M.*12 *E.*2. *Extent.*6.

Where

Where the Enqueſt ſhall be demanded, or ſtayed, and for what cauſe delayed, and where demaunded upon a peyn.

IF in any Action the Defendant do demur in Judgement to parcel, and to other parcel are at iſſue, no Proceſs ſhall go to ſummon the Jury, till the Demurrer is adjudged, *M.2R.2.Enqueſt.2.* And ſo it was adjudged in Waſte. 48 *E.*3.15. But there *Belknap* held in Waſte & Treſpaſs *Quere*, for he was then but a Serjeant, and 11 *H.*4 5 agrees with him, and 7 *E.*3.17. but there the Judgement ſtayed till the Demurrer was decided

In Aſſiſe, the Tenant pleaded a Recovery, and the eſtate of the plaintiff was mean, and they were at iſſue upon, Not Compriſed, *&c.* and Proceſs went againſt the Summons and Veiors; And the Jury were demaunded, to the end they might (as it ſeemed be amerced) if they did not appear; and if they did appear, then nothing was to be done, until the matter in Law was decided; as if a matter in Law be pleaded, if Aſſiſe lye in the Caſe, the Iuſtices uſe to adjorne the Aſſiſe from day to day, and at every day the Jury ſhall be called; yet their Verdict ſhall not be taken if they come, till the matter in Law be determined, 41 *E* 3.11.48. *Aſſi.1. acc.*

Although the Jurors do appear, yet none of them ſhall be demanded upon a peyn, unleſſe the party pray it, 4 *H* 6 7. Pein 1. And where they do appear and are pricked, and the time is paſt, and the Array being affirmed day is given, and the next day one of the Jury doth not come, and the parties wil not demād him upō a peyn. *Choke* ſaid, That it is the Courſe in Aſſiſe where a Jury appeareth, and afterwards maketh default, that he ſhall not be called upon a peyn but at the prayer of the party; and the pein ſhall be to the value of his Land for a year. *Danby* agreed as to the value of the peyn; and ſaid that he was to be demanded upon a peyne, and afterwards he cauſed other of the Iury to be demanded, and the Enqueſt remained for want of Jurours, *M.*4 *E.*4.39. *Peine* 2.

In Aſſiſe, a Jurour was called upon a pein to the value of his Land for a year, becauſe he was in the Hall and came not; and becauſe no Jurour ſhall looſe any thing, if not the Enqueſt do remain for his default; And this Aſſiſe did not remain for his default, but becauſe there were but 5. of the Jury which had the view; therefore he did not looſe the peyn, 9 *E.*4.5. But if a Jurour be challenged, and the next day he be found indifferent, and being called doth not appear, he ſhal be fined to the value of his Land, although the parties do not pray it, or challenge him, &c. and that for his contempt. But if he had not appeared before, yet the Juſtices may enquire of he be in the Hall without the prayer of the parties 2 6 *H.*6. 28. *Challenge* 47. And if the parties do forgiue it, he ſhall be called upon a peyn, 48 *E.*3.30.

If two Pannells are to appear upon an Iſſue in 2. Counties, and of one pannel

one pannel, but one doth appear, yet the others ſhall be called upon a pain at the prayer of the parties, and the ſame ſhall be tried by two of the other Iury, 48 E. 3. 30. *Enqueſt* 42.

A Iury was demanded upon a pain, It was teſtified that they wer ein the Town, by which the pain was forfeited, and now the Plaintiff did ſurmiſe, that there were enow of others in the Town to make a full Iury, and becauſe the pain is forfeited at the prayer of the parties before, he was not admitted to ſay ſo, for if a full Jury ſhould be, the King ſhould loſe his Fine, but if the other had not been called upon a pain, it had been otherwiſe, 30 *Aſſ.* 3. *Enqueſt* 50. and *Thorp* would not call them in an Aſſiſe upon a pain at the prayer of the party, and that was holden to be againſt Law, 30 *Aſſ.* 42. *Enqueſt* 51.

VIII. *Where the Enqueſt ſhall be awarded by default, and where not, and where Diſtreſſe to hear the Judgement ſhall be awarded.*

IN Waſt the Defendant pleaded to iſſue, and at the *Venire facias* returned the Defendant did not appear, the Enqueſt ſhall not be taken by his default, but a Diſtreſſe to hear Judgement, *H.* 18 *E.* 3. *Enqueſt* 3. See of this matter the Statute of *Marlebridge*, *cap.* 14. and *Weſt* 2. *cap.* 27.

One did avow for a Rent, and after Iſſue the Avowant made default, and the Jury came to the Barre, and yet no Enqueſt was taken by default, but a diſtreſſe to hear Judgement, becauſe it is the firſt day after the Enqueſt, but if it were the ſecond day, the Enqueſt ſhould be by default, *P.* 20 *E.* 3. *Enqueſt* 11.

Upon default in a *Quare impedit*, the defendant made default, they did not give Judgement without a Diſtreſſe *ad audiendum Judicium*, but the Diſtreſſe was not entered, but the Summons onely in Error, *H.* 15 *E.* 3. *Error* 72.

In Debt at the *Capias* they were at Iſſue, and the Defendant by mainpriſe, and appeared not, the Enqueſt was taken by his default, and the ſame was good without Proceſſe againſt the Main Pernors, 38 *E.* 3. 14. but *M.* 13 *H.* 2. *Proceſſe* 192. contrary Proceſſe againſt the Main-pernors and not the Enqueſt by default, and in ſuch caſe after iſſue no Eſſoin nor default.

In Accompt, the Defendant being outlawed, had a Charter and *Scire facias*, the Plaintiff declared, and they were at iſſue upon traverſe of the receit, and day given without ſureties by negligence, at which day he did not appear, and the Court awarded a Writ to take his body, and the Enqueſt was taken for his default, *H.* 18 *E.* 3. *Enqueſt* 4. and if at the *Exigent* the Defendant had traverſed the Receipt, and found Sure-

ties, and afterwards made default, the Enqueſt ſhould be by his default, *P.* 24 *E.* 3 *Enqueſt* 10. See that a *Capias* was awarded in ſuch Caſe, *ad audiendum Juratores*, & by ſome he hath loſt his challenge, *H.* 22 *E.* 3. *proceſs* 172.

Debt upon an Obligation againſt an Executor, who pleaded fully adminiſtred, and at the *Venire facias* returned, he was eſſoined, and at the day he was eſſoined, *De ſervitio Regis*, at which day hee did appear by Attorney, and did not warrant the Eſſoine, for which the Plaintiff prayed damages for the Enqueſt, but the Enqueſt ſhall not be taken by default, for that is a double penalty, yet in treſpaſs the Plaintiff ſhall have the one & the other in the Kings Bench, but that was ſaid was not like in debt, 21 *E.* 3. *Enqueſt* 8. But at the *Venire facias* in a *Quia juris clamat*, the Attorney did caſt an Eſſoine, and that was quaſhed, and the Enqueſt awarded by default, and not challenged after, 10 *E.* 3. 32 *Enqueſt* 47. But in a Writ of Ward he came by Proclamation, and pleaded to iſſue, and the plea was without day by protection, at the reſummons the Defendant was eſſoined of a common Eſſoin and afterwards of the ſervice of the King, and the day made default, and *Hill* award a diſtreſſe to hear the Jury, 15 E:3:3: *Judgment* 130.

In a Writ of Ward, the Defendant pleaded to Enqueſt, and the Plea was without day by protection, and at the Reſummons the Sheriff did return, that the Defendant had nothing, yet the plaintiff had not the Enqueſt by default.

Re-attachment in Treſpaſs, the Plaintiff and Jury did appear, and the Enqueſt taken by default *per Curiam*, *Bryan*, it ſhould not be by default upon reſummons, &c. *Jenny* contrary, and ſaid, that ſuch Caſe was ſo ordered before him in the Kings Bench, *M.* 1 *R.* 3, 4.

In a perſonall Action the Defendant at *Niſi prius* made default, and that was recorded, and afterwards a ſtranger caſt a protection for him, and that was recorded, and at the day in Banck the protection was repealed, and thereupon the Plaintiff had the Enqueſt by default, and if the Defendant had appeared at the *Niſi Prius* taken by Attorney, and caſt a protection, although the ſame were repealed after, the Plaintiff ſhould have the Enqueſt, but not by default, 4 E. 4. 1. *Enqueſt* 23 21 *H.* 6. 20. *Enqueſt* 28. 11 *H.* 6. 14. *Niſi prius* 3. But if he make default at the day in Banck, it ſhall be by default, 21 *H.* 6. 20. *Enqueſt* 28. But if the Defendant had made default at the *Niſi prius*, and without recording of it, the protection had been caſt and repealed in Banck. It ſeems the Enqueſt ſhall not be by default, 14 *H.* 6. 2. *Niſi prius* 2.

In annuity they were at Iſſue, and at the day which the Enqueſt had, the Defendant did not appear, and the Enqueſt was awarded for his default, 7 *E.* 3. 22. *Enqueſt* 45.

Attaint in *Middleſex* of a falſe Verdict in a *Pracipe* brought in *Surrey* againſt *T.* and the Sheriff returned that *T.* had nothing. Now the Plaintiff ſhall not have the Enqueſt by his default, but a Writ to the Sheriff of *Surrey* where the firſt Writ was brought 42 *Aſſ.* 14.

But

But ſee at the day of the Diſtreſſe againſt the Grand Jury in Attaint, the Enqueſt was taken by default of thoſe of the Petit Jury *P.*22 *E.*4.1. So at the day of Diſtreſſe againſt the Petit Jury, where many of them do not appear, 12 *H* 6.6.

But ſee according to 42 *Aſſ.* That an Attaint ſhall not be awarded for the default of the Tenant, where he was not ſummoned, if he hath any thing in another County, for which Proceſſe upon the *Teſtatum* iſſued into *Cornwall*, *T.*21 *E.*3.18 *Attaint* 37.

An Appeal of Rape, the Defendant pleaded not guilty, and becauſe he appeared not, *Capias*, *Alias*, *Pluries*, and Exigent awarded, and if he appear and render himſelf pendant the Exigent, he may endeavour to make the Enqueſt to appear again, for it was without day by the Exigent, and they would not take the Enqueſt by default in Caſe of Felony, 16 *Aſſ.*13. *Coron.* 173. 26 *Aſſ.* 51. *Coron.* 196. where he did eſcape after not guilty pleaded. *vide Stamford* 70.

And note, Proceſſe ſhall be *ad audiendum Judicium*, but by *Stamford* 70. *in* 16 *Aſſ.*13. *a Capias ad audiendum Juratores*, according to 19 E. 3. Exigent 10.

A Writ of Meſne againſt three, upon not diſtreined in their default, at the *Niſi prius* they did not appear, for which the Enqueſt was awarded for their default. *Finchden*, In an action reall as Meſne, Cuſtomes, and ſervices and *Quid Juris clamat*, the Enqueſt ſhall not be by default, but a *diſtringas* in lieu of a Petit Cape, *Skipworth*, here it is well taken, becauſe upon not diſtrained *&c.* the Aquitail is confeſſed, and the Enqueſt is to be taken for the dammages onely, ſo perſonall, and that ſeems to be the opinion of the Book, for the Iudgement was given upon the Verdict, and he ſaid in a *Quid Juris clamat* upon a Fee claimed, and afterwards he makes default, that the Enqueſt ſhall be taken by default, which *Green* denyed, and ſaid, that he had forfeited his Land, *M.* 30 E. 3. 28. *Receipt* 12. but ſee before in a *Quid Juris clamat* upon ſuch a Plea, the Enqueſt awarded by default, *T.*10 E.3.32. *Enqueſt* 47.

Precipe againſt two, at the *Niſi prius*, one made default, Petit Cape ſhall be in Banck, and not the Enqueſt by default of his Moiety. *Quere* of the other Moiety, *M.*12 *H.*6.7. and before or after Iſſue in a reall action ſhall iſſue a Grand or Petit Cape, and the Enqueſt ſhall not be by default, *T.*37 *H.*6.31.

Detinue, they were at iſſue with the Garniſhee, who made default at the *Niſi Prius*, and a Protection caſt and repealed in Bank, and the Plaintiff prayed Deliverie of the Bond, becauſe this is a Default at the *Niſi Prius* although it bee now repealed, did ſave the default at the *Niſi prius*, otherwiſe it ſhould be, if the Protection had varied or been inſufficient, becauſe there it was never good, 4 *H.* 6. 9 *Detinue* 3.20 *H.*9.20 See, it is holden that he ſhall be condemned, and the Enqueſt not taken by default, 8 *H.*6 5. *Condemnatiion* 2.

An Office was traverſed, and Proceſſe was againſt the Guardian of the

Land aſſigned by the King and againſt the Enqueſt, and the Guardian did not appear, for which the Enqueſt was taken, and Execution awarded, 29 *Aſſ.*43. *Livery* 10.

In an Annuity upon a Deed denied, and default after a *Diſtringas* iſſued *ad audiendum judicium*, and he appeared not, and Judgement was given, *H.*6 E.2. *Iudgement* 230. and ſo the party was condemned upon default after a Deed denied by the Court in Debt, 9 *H.*5.13.

IX. *More, Where the Enqueſt ſhall be taken by default, and where a man ſhall be condemned for default, or for not pleading.*

A Writ was awarded to enquire of Waſte againſt the husband and wife, and at the return ſhe prayed to be received, and the ſame was counter-pleaded, and at the day given ſhe made default, for which judgement was given without any Enqueſt, *T.*15 E.3. *Iudgement* 132.

If in Debt, Accompt or other perſonall action the Defendant pleads a Releaſe or Acquittance, and afterwards doth not appear, he ſhall be condemned, but if it were arbitrement, payment or other matter in fact, the Enqueſt ſhall be taken by default, 5 E 4.6. *Condemnation* 4. *T.*37 *H.*6.31. 45 E.3.1. *Condemnation* 14. 1 *H* 7.1. But if upon ſuch default, after releaſe pleaded, the Enqueſt be taken, the ſame is well enough, 42 E.3.1. *Condemnation* 12. the party was condemned by default after *Dureſſe* pleaded, *M.*9 H.5.13 *Condemnation* 7. *M.*11 H.4 32. *P.*14 E.3. *Condemnation* 18. 8 E.3.55. 9 E.3.27. 15 E 3. *Condemnation* 27. 5 E.3. *Condemnation* 24.

A *Scire facias* upon a Recoverie againſt two Executors, they were at iſſue (it doth not appear what the iſſue was) and upon default of one Judgement was given, *T.*21 H.6.45. but ſee 21 H.6.7. that the Iſſue was becauſe the Sheriff had levied the money by a *Scire facias*.

Vide 21 H.7. 25. *Seems by the Law to be otherwiſe by Read*, 10 H.7. 2.4 H.7.5.16 *H.*7.4.37 *H.* 6. 17.7 *E.*4.8.

Debt upon an Obligation, a defezance was pleaded upon Condition, they were at Iſſue, the Defendant made default, upon which the Enqueſt taken, found for the Plaintiff, where it ſhould not be taken no more then upon a Releaſe pleaded. *Green*, the Judgement ſhall be upon the default, and not upon the verdict, and ſo it vvas, *Wich.* becauſe the Enqueſt is taken vve may have judgement upon the verdict, *P.* 32 *E.*3. *Condemnation.* 17.

Upon default after *Dureſſe* pleaded, the Enqueſt ſhall be by default, and a *Diſtringas ad audiendum Juratores*. but upon a Releaſe pleaded, *Diſtringas ad audiendum judicium* ſhall iſſue, H. 13 E.3. *Condemnation* 21. But upon *Dureſſe* pleaded, and default before Iſſue, proceſſe ſhall be *ad audiendum judicium*, as if the Defendant came before by *Capias*, a *Capias* ſhall iſſue *ad audiendum judicium*, and if he doth not then appear, *Quære* vvhat ſhall be done, *M* 11.H.4.32. *Condemnation* 10.

And upon Infancy pleaded in Debt and default made at the *Niſi prius*, the

the ſame was recorded, and at the day in bank, had a Diſtreſs *ad audiendum juratores*, and at the day of the *Niſi prius*, you ought to have preyed the Iury, *M.8 E.3.55. Condemnation.22.*

But ſee contrary, *Diſtringas ad audiendum judicium* awarded here upon *Non ſana memoria* pleaded, *Hill* ſaid, *Non ſana memoria* is no Plea of ſelf, *Vide* 5 E.3.70. *Condemnation.25.*

ERROR,

And when it muſt be brought, and in what Courts.

A Writ of Error; is Writ which lyeth either for the plaintiff or for the Defendant where an Erronious Judgement is given, in a Court of Record; or in any other inferiour Court, who have power or Juriſdiction to hold plea of any ſumme above forty ſhillings, or of any Treſpaſs r other cauſe, where the damages do amount unto forty ſhillings, *F.N.B.20. b.*

H.27 H.6.27. A Writ of Error was brought againſt Executours; and it was ſhewed that upon *Niſi prius* in *London* it paſſed for the Defendants, and day given, till 15 *Hillarii*, at which day there was Judgement given for the defendant. And the plaintiff brought a Writ of Errour, which bore date two dayes before the fourth day after *quindena Hillarii*, and whether the Judgement were ſo paſſed, that Error did lie before *quarto die*, was the Queſtion, And the opinion of the Court was, that the Writ was well brought; and it ſhall be as if the Judgement were given the firſt day; but if the Writ of Error had bin brought before the firſt day, then the ſame had not bin good, becauſe there was then no record of the judgment, yet *Qu.* of that. For that in 3 H.9. A writ of Error was brought before the Judgment was entred, and it was holden by the whole Court to be good, and *Vi.*

33 H.6.46. That the partie hath four dayes after the return of the *poſtea*, but of Curteſie, for the appearance ought to be at the firſt day if the plaintiff be there, as it is in a Writ of Right, if the Demandant do not appear the firſt day, it ſhall turn unto a default.

If Judgement be given in an Aſſiſe before Juſtices in the County de *N.* if Error be therein the party may have his Writ of Error returneable in the Court of Common pleas, or in the Court of *King Bench* at the Election of the party, *vi.* old *N. B.* 55. *acc.*

In 8 *Eliz. Dyer* 250. A Writ of Error was brought in the Common Pleas upon a Judgement given before Juſtices of Aſſiſe in the County of *Monmouth*, and the Defendant in the Writ of Error did demurre to the Juriſdiction *viz.* that they had not power to hold plea of Error upon a Judgement given before Juſtices by the Kings Letters Pattents; and there upon long debate it was the opinion of all the Juſtices; that the Writ of Error did not lye.

A *Quare impedit* was brought againſt the Biſhop of *Saliſbury* and the Incumbent, Verdict paſſed before Juſtices of Aſſiſe for the plaintiff, whereupon Judgement was given for them, and a Writ awarded to the Metropolitan, and a Writ of *Fieri facias* to the Sheriff for the Damages, the Defendant notwithſtanding brought a Writ of Error to remove the Record in the Kings Bench and had alſo a *Superſedeas* to the Sheriff; and afterwards aſſigned Errors. 6 *E.* 6 *Dyer* 67. *b. acc.* See like Error brought in the Kings Bench upon a Recoverie in an Aſſiſe, and the Judgement affirmed, 23 *Eliz. Dyer* 375.

7 H.6.28. Helebrands *caſe.*

A Writ of Error was brought in the Kings Bench, to reverſe a Judgment given in the ſame Court: and the Error aſſigned was, that whereas the parties was at iſſue, that upon the diſtringas an Octo tales was returned, whereas no ſuch was awarded upon the Roll, and after long debate, becauſe the ſame was the act of the Officer, and not of the Judges, it was adjudged that they might reverſe the ſame, and amend the Roll, and it was ſo adjudged, See the many caſes put, where the Judges may reverſe a Judgement for Error in the Proceſs, and for other Cauſes in their own Court.

In 2 *R.* 3. 1. The caſe was, that 3. men did recover in an Aſſiſe againſt *B.* and others. *B.* and the others brought a Writ of Error in the Kings Bench, pendant which Writ, one of them dyed, and the Court having no notice of his death, did reverſe the Judgement; afterwards thoſe who recovered in an Aſſiſe, and againſt whom the Judgement was reverſed, brought a Writ of Error in the ſame Court, and aſſigned for Error that one of the Plaintiffs in the firſt Writ of Error was dead, and one of the Queſtions in that caſe was, Whether a Writ of Error did lye in the ſame Court before the ſame Juſtices, upon a Judgement given in a Writ of Error, by themſelves in the ſame Court; and although it was ſtrongly objected, that the Judges of the ſame Court may reverſe a Iudgement which is given there by themſelves, as in Caſe they may Reverſe a Iudgement, where a Proceſs of Outlawrie *erroniè emanavit*; and may make void a Fine which is levied of Lands which is Auncient Demeſne, in their Court, and the Lord reſtored to his Writ of diſcent, yet the better opinion of the Book here, and after the opinion of all the Juſtices, *M.* 2 R. 2. 30. was, that a Writ of Error, upon a Writ of Error to reverſe a Iudgment given by the ſame Juſtices in the ſame Court would not lye, *Vide Librum.*

15 *E.* 4. 21. *b.* If a Record be removed out of the Court of Exchequer into the Exchequer Chamber, by Error; when Iudgement is given, all ſhall be remanded, and Execution ſhall be awarded in the Exchequer: but that ſeemes to be by the Statute of 31 *E.* 3. which gives the Writ of Error of Error in the Exchequer. 11 *E.* 3. *cap.* 12.

II. *When a man may aſſigne Errors in Fait, and when not, and What Matters in Fait may be aſſigned for Error.*

IN a Writ of Error brought by the Uncle and the Nephew upon a Iudgment given againſt the father and the uncle in a Writ of Meſne brought againſt them of Lands in *Gavelkinde.* This Queſtion did ariſe, whether they might aſſigne for Error, that the Father dyed, pendant the firſt Writ, becauſe the ſame is matter in Fait which the Uncle might have pleaded and have abated the Writ, and it was holden that foraſmuch as the matter proved the Writ abated; that the ſame ſhould be admitted. But ſee there by *Burton*, That if the matter had proved the Writ to be only abeatable, by taking of a husband pendant the Writ or the like there it had bin otherwiſe *Vide* 19. *Aſſ.* 8. Note out of that caſe. 2. things. 1. That a Iudgement held againſt a dead perſon is not void, and 2. That by death the Writ is abated.

Note 18 E. 4. 19 *by Choke where the Tenant or Defendant dieth at any time pendant the writ, the writ is abated and yet he ſhall have writ of Error, but where the writ is abated onely, he ſhall not have Error.*

In an Action of Debt brought, An Exigent was awarded where no *Pluries capias* iſſued forth againſt the party, and the party appeared and pleaded, and Iudgement was given againſt him. And afterwards he would have alledged the ſame for Error, and he was not ſuffered ſo to do, becauſe he might have pleaded the ſame at the firſt, But it was holden, that if the Original had bin naught, there after pleading he might have alledged the ſame for Error, but if the matter which the party alledgeth, be matter in Fait which he might have pleaded there, he ſhall not aſſigne the ſame for Error, 36 *E.* 3. See *Error* 82.

In 38. *H.* 6. 10. and 39 *H.* 6. 17. In an Aſſiſe, at the firſt day. 2. of the Iurours were ſworn, and afterwards the Aſſiſe remained for want of Iurours, and at the ſecond day, the partyes appeared, and the Iurours, and the Iury was full and found for the plaintiff, The Defendant thereupon brought a Writ of Error upon the Iudgement, and aſſigned for Error, that no entrie was made upon Record for the 2. firſt Iurours that they were ſworn, nor that any *Habeas Corpora* was returned the ſecond day, nor any continuance upon Record, but a remembrance made upon the Back of the Panell that the 2 Iurours appeared and were ſworn. And although it was upon examination of the Prothono. ſaid by them, that it was not the courſe to enter any thing in an Aſſiſe, till a full Iury appeared and were full, and the Record

Record made appear, yet the opinion of the Juſtices was, that it was an ill Courſe, and the not doing of the ſame was Error, for it was ſaid that perhaps the Plaintiff had releaſed after the *darrein continuance*, and if no mention were of the Continuance, he could nothave advantage thereof, and the courſe of the Prothonotaries ought not to prejudice the parties and if one or both the Jurors which were firſt ſworn, ſhould at the ſecond day be challenged, the party could not then ſay, that they were before ſworn upon a Record, and if one Juror were withdrawn at the firſt day, if the ſame were not upon Record, at the ſecond day he might be ſworn again, but it was agreed that in a *Præcipe quod reddat*, and other the like Writs, when a Plea is pleaded, then it ſhall be entred upon Record, and there Proceſſe ſhall not be awarded to ſummon the Jury before the parties be at iſſue, and when iſſue is joyned, it ought to be entred upon Record, and then Proceſſe awarded.

Note, it was holden by the whole Court, 15 *Aſſ.*8. In a Writ of Error, that the Judges *ex officio* ought to reverſe the Iudgment there given, although the party had pleaded and admitted, the Writ good the principal Caſe there was, that an Aſſiſe was brought againſt one Guardian of the Church of *B.* and pendant the Writ the Guardian did reſign, and the Writ was brought againſt him, not naming of him Guardian, and thereupon the Succeſſour brought a Writ of Error, and alledged the matter aforeſaid for Error, and it was adjudged that the Writ of Error was well brought.

If Iudgement be given in the Court of Common Pleas, or in the Kings Bench, and the Record be removed in another Court, there the Plaintiff may aſſign any Error in matters in fait, but if he do aſsign Errors in Law, and afterwards hath a *Scire facias* againſt the party *ad audiendum Errores*, there he cannot aſsign for Error and matter in fait, as in the Caſe in 2 *R.*3. 1. after a *Scire facias* brought, the Plaintiff cannot aſsign for Error, that one of the Plaintiffs in the cauſe where Iudgement was given was dead, either at the time or before Iudgment was given, *F. N. B.* 20. *b.* 24 *E.*3. 24 *Fitz. Error* 10.

In 22 *E.*4.46. A Writ of Error was brought in the Kings Bench to reverſe a Iudgment given in the Common Pleas in a VVrit of Dower, and aſsigned for Error, that the Tenants in the Writ of Dower did appear by Attorney, whereas no warrant of Attorney was entered and prayed a Writ to certifie whether any warrant of Attorney was entered, or not, and there the opinion of the Court was, that he came too late to aſsign any ſuch Error in fait, becauſe that if a Writ of Error be once ſued, and the Record be removed, if the party will aſsign any Error, which is matter in fait, he ought to aſsign the ſame before any *Scire facias* iſſueth forth againſt the defendant, and in the principall Caſe it was ſaid, that the party had brought a *Scire facias*, and the entrie of the Warrant of Attorney is matter in fait, and ought to be certified by others then by the Iuſtices, who certified the Record, and by bringing of the *Scire facias* againſt the party,

party, he had affirmed the whole Record, and the partie cannot alledge the want of warrant of Attorney to be diminuced, for Diminution is where the party ſaith, that the originall, the Grand Cape, or the Exigent, is in the inferiour Court, and if there be no warrant of Attorney, then the ſame cannot be diminution of the Record, for if it ſhould be diminution, then it ought to be of a thing which is in *eſſe*, which is contrary to what the party himſelf affirmeth.

In 5 *H.*7. 4. A writ of Error was brought upon a Rediſſeiſin, and the Error aſſigned was, that whereas the Sheriffe had returned that at the place where the Tenements were, that he with the Guardians of the peace, and the Coroners took the Enqueſt, the Defendant did alledge for Error, that the Sheriff did not come to the Tenements as he had made his returne: It was objected that the ſame was error, for that the Sheriffe had two powers in him, one as Judge, and another as officer to the Court, and the coming to the Tenements, he was to do it as Officer, and not as Judge, and therefore his Return was erroneous, he not being there, but the opinion of the whole Court was, that what the Sheriff did in that Caſe he did as Judge, and not as Officer to the Court, and in no Caſe a man ſhall be received to alledge any thing contrary to that which a man doth as Judge, and therefore it cannot be Error, for it cannot be aſſigned for Error, that the Juſtices of the Common Pleas did not give the Iudgment, but that the Clerks entred the Judgment of their own accord; or that no Juror was ſworn, or the Iurors gave their Verdict for the Defendant, and that the Judges gave Judgment for the Plaintiff, becauſe the ſame is contrary to that which they do as Iudges, and therefore becauſe in the Principall Caſe: the Sheriff had certified, that at the place he took the Verdict as Iudge, therefore to ſay that he was not there, is not good, for a man ſhall never be received to traverſe directly the Return of the Sheriff, as to ſay, he was not ſummoned, or attached, but he ought to ſay, that he was not attached by 15 dayes, or not ſummoned according to Law, and therefore the Error was diſallowed, *vide F. N. B.* 21. *Br.* Averment againſt the Return of the Sheriff, 16. *vide* 3 *E.*4. 22. and *P.*5 *E* 4. 2. *acc.*

A man outlawed of Felony brought a Writ of Error, and aſſigned for Error, that the Exigent iſſued forth, 22 *E.*4. in which year the ſaid King dyed, and that he was not demanded but twice in the time of King *E.*4. and *Farico exactus* in the time of *R.*3. and yet he was outlawed, and upon debate had before the Iuſtices, the ſame was holden for Error, becauſe by the demiſe of the King the Writ was abated in Law. So note there, that the Outlawry was not holden void, but onely that the Exigent *Erronicè emanavit*, and therefore notwithſtanding that the Outlawry was reverſed for the cauſe aforeſaid, yet the Defendant was put to anſwer to the Felony, and ſo it is not like where a man is outlawed at the ſuit of a common perſon, in other Actions, as in an Action of Debt or Treſpaſſe, for in ſuch Caſe if the King dyeth, and another is King

if the party upon the Exigent ſueth forth a Writ of Error and reverſeth the Outlawry, he ſhall not be put to anſwer, 7 *H.*7.5. *Br. Coron.* 143. and *Outlawry* 44. *acc.*

Where man ſhall plead in Nullo eſt erratum, & e contra, *and where the Plea ſhall eſtoppe the party to aſſign any Diminution in the Record.*

NOte that when an Error in fact or any thing which is no part or parcell of the Record is pleaded, there and in ſuch Caſe to plead, that in *Nullo eſt erratum* is no Plea, and the reaſon is, becauſe thoſe matters are triable by the Country by Iury, but where Errors are aſſigned which are within the Record, and there is a Demurrer upon the ſufficiency of the matter aſſigned, and a Confeſſion of the Record to be ſuch as is produced, there the party ſhall not after be admitted to alledge Diminution of the Record, becauſe the ſame is quite contrary to what the party before hath admitted, *vide* 9 *E.*4.32.*b.*

Hill 13 *Jac. in B.R. Brook and Gregories Caſe.*

Note, it was holden in the Kings Bench by all the Iuſtices, that if the Defendant plead in *Nullo eſt erratum* that he ſhall not afterwards alledge diminution, becauſe they are agreed that that is the Record, and the demurrer upon it is whether the matter alledged be Error or not, 7 *E.*4.25. Alſo it was holden by the Court, that a man cannot alledge Diminution of any thing which appeareth in the Record to be true.

In 28. *H.*6.10. In a Writ of Error upon a Judgement in Aſſiſe, the Plaintiff aſſigned his Errors and prayed a *Scire facias*, the Defendant appeared and pleaded in *Nullo erratum eſt*, and thereupon day was given untill another Term, at which day he appeared and aſſigned for Error, that it appeared in the Record that they were at iſſue upon ſeverall matters pleaded out of the point of Aſſiſe, whereof the one was not enquired of, nor any thing found thereof in their verdict, and yet the Jurours had aſſeſſed damages for the whole. The Councell of the Defendant alledged Diminution of the Record, and prayed the Record might be certified; it was there holden, that the party could not alledge Diminution of the Records, becauſe he had admitted the Record before, and after the *Scire facias* returned had pleaded, although it was objected that the parties might as well alledge Diminution in another Term, as the party might aſſign new Errors in another Term, but the opinion of the book is, that for as much as the Iudgement and damages was given for the whole Land, whereas nothing was ſpoken of one Acre part of the Land, in the Verdict, that the ſame was Errour, and the Iudgment was thereupon reverſed, and there it was ſaid by *Danby*, That if a *Precipe quod reddat* be brought, if the Tenant plead two Pleas, and one of them is found for the

Demandant

Demandant, and nothing is ſpoken of the other plea, if judgement be given for the whole, it is Error, and ſo in Aſsiſe, if the Aſsiſe be taken for part, it is erroneous for the whole, and the judgement was reverſed, and ſo the alledging of Diminution was not allowed of, note Mr. *Fitzherbert*, in abridging of this Caſe, for which of the points the judgement was reverſed.

A Writ of Error was brought in the Kings Bench of a judgement given in *Briſtow*, and it vvas aſsigned for Error, That vvhereas it vvas commanded the officer of the Court to attach ſuch an one to appear at the next Court, *viz. die Martis in Feſto Sancti Edmundi* &c. vvhereas the ſaid Feaſt vvas *die Mercurii*, ſo as no day vvas given to the party, the Defendant did alledge diminution of the Record, *viz.* that it vvas commanded the Officcer that the party appear at the next Court, *viz. die Martis 16 die Julii anno quinto, nunc in Feſto Sancti Edmundi &c.* ſo as theſe vvords *Sancti Edmundi* vvere void, and prayed a Certificate of the Record and diminution; In that Caſe it vvas holden by *Billing* and *Newton*, that a man cannot alledge diminution of a thing vvhich is contrary to the thing certified, but othervviſe it is of a matter vvhich ſtands vvith that vvhich is certified, and that vvhich is alledged for diminution in the principall Caſe is not contrary to the Record vvhich is ſent, but proves that parcell of the Record is left out, and there it is not ſufficient, and afterwards the Plaintiff ſaid, that the ſixteenth day of *Julii, anno quinto Regis*, vvas *die Mercurii* &c.

Where a Writ of Error is ſued in *London*, of an Error vvhich vvas in the Court before the Mayor, it ſhall be tried at Saint *Martins*, and then the Mayor and Aldermen ſhall have 40 dayes to adviſe upon the Record, and then the Recorder ſhall certifie it *ore tenus*: But *Quare* vvhether the party may alledge Diminution of a Record out of *London*, vvhich is certified by the Recorder *ore tenus*; for that vvas argued in the Exchequer *P.* 34. *H.* 6. 42. and divers opinions vvere there holden concerning the ſame.

Note, that it is holden, 11 *H* 4. 65. by the vvay, that a man ſhall not alledge Diminution of a Bill vvhich is ſealed by the Iuſtices, becauſe the ſame is not parcell of the Record, untill the Iuſtices have certified it, and ſo ſee 22 *E.* 4. 45. That after a *Scire facias ad audiendum Errores*, a man ſhall not alledge an Error in ſuit, or Diminution of the Record.

An Action upon the Caſe was brought upon an *Aſſumpſit* Error aſſigned was becauſe that no place was limited where the payment ſhould be made, the Originall was, that the promiſe was in conſideration, that the Plaintiff did lend to the Defendant ſo much, he at *London* did promiſe to pay the ſame to him again, and in the Caſe there were two Originalls, which bore date the ſame day, and in that Caſe Judgement was given for the Plaintiff, and the Defendant brought a Writ of Error and alledged Diminution of the Originall, and then the other Originall was certified, the Defendant in the Writ of Error ſaid, that the Originall upon

which the Recovery was grounded, was an Originall which had a place certain, and upon long debate of the Caſe, it was at laſt reſolved by the Judges, that the ſame was the true Originall which did affirm the Judgement, and which did agree with the Proceedings, *vide* 18 *Jacobi*. *Rot. Trin.* 1623 *Bower & Jones* Caſe adjudged.

In *Hayns* and *Cronches* caſe, *Tr.* 21 *Jac.* which was entred *M.* 19 *Jac. Rot.* 322. the Caſe was, *Haines* brought a Writ of Error againſt *Cronch*, to reverſe a Record upon a judgement, which was given in the Common pleas, the Originall which was certified bore date, *Trin.* 18 *Jac.* and an *Ejectione firmæ* was brought, *Trin.* 18 *Jacobi*, for an Ejectment which was made in *September* following, and the ſame matter was aſſigned for error, and the party had a *Certiorare* to remove the Record, upon which Diminution was alledged, for that the originall upon which judgment was given, bore date in *September*, which was after the ejectment. It was ſaid by the Iuſtices, that the Originall is no parcell of record, but if error be aſſigned it muſt be aſſigned in the Diminution, for as the book in 6 *H.* 7. 16. to alledge any thing againſt a record is void, and in that Caſe the ejectment being after the firſt originall it was holden that the ſame was well enough, and if two originalls be brought the Court ſhall intend the judgement to be given upon the originall which is warranted by the proceedings, and they ſhall judge thereupon, and the Iudges ſhall not ſuppoſe an error.

Hill. 13 *Iacobi* in the Kings Bench, the Caſe was this, In a Replevin brought, the Defendant did avow the taking of the Cattell damage feaſant, and upon iſſue joyned it was found for the plaintiff, in a three weeks Court holden at *Windſor*, the Defendant thereupon brought a Writ of error, and aſſigned for error, that the Entry of the plaint in the Court was the ſeventh day of *May*, and that the plaintiff afterwards did declare there of taking of the Cattel the 25 of *May*, and whether the ſame was Error or no was the Queſtion: It was objected that it was no Error, and the Book of 21 *E.* 4 66. was alledged to prove the ſame. But in this principall Caſe theſe 3 points were reſolved by the Iuſtices. 1. Becauſe that no plaint can be entred, but at a Court and the Entry of the plaint in this Caſe was Meſne betwixt the Court days, and ſo the Declaration was not warranted; there being no Cuſtome alledged to maintain ſuch an Entry, that the ſame was Error. 2. It was reſolved in this Caſe, that after in *Nullo erratum* is pleaded, that the Defendant cannot alledge diminution, becauſe there is a perfect iſſue before, and 3. It was reſolved that a man cannot alledge Diminution of any thing which appeareth in the record to be true, and becauſe the Defendant in the principall Caſe did alledge diminution of the Record, and by the Record it was certified that the plaint was entred the 25 of *May*, the ſame was not good after iſſue joyned, and for theſe cauſes the judgement was reverſed.

A man brought a Writ of Error to reverſe a Iudgement given in the County Palatine of *Cheſter*, and the VVrit of Error bore date before the

the Plaint was there entred, and whether the Record were thereby well removed, or not, was the Queſtion, and it was reſolved by the whole Court. *Mich.* 17 *Caroli*, in *Dale* and *Worthies* caſe in the Kings Bench, that the Record was not well removed by that writ of Error, becauſe if there be not any plaint entred at the *Teſte* of the Writ, how can the *Proceſſes* according to the words of the Writ be removed, when there is no *Proceſſes* entred, and that failing all fails, but in that Caſe it was agreed, that a Writ of error bearing date before the Judgement may be good, as the book in 1 *E.* 5.4. is, becauſe that there the foundation ſtands good, and the uſuall courſe of practice doth warrant the ſame.

Where the Judges ſhall proceed notwithſtanding a Writ of Error be brought upon the Judgement, where not.

IN Debt brought, the plaintiff declared that he had recovered an annuity upon a Grant of the Predeceſſor, with a *nomine pœne* within the Grant, if the annuity was not payed, and that he brought his Action for the *nomine pœne*, and the Defendant did alledge that he had brought a Writ of Error upon the ſame Judgement, and notwithſtanding the Judges did proceed, becauſe it appeared by the Deed that he ought to have the *nomine pœne* for the non payment of the annuity, *vide* 4 *H.* 6. 31 *acc.*

Debt was brought againſt executors, one of them appeared at the diſtreſs, and denied the Deed which was found againſt him, the Plaintiff prayed Execution, and a Writ of Error was brought, and upon that an *alias vel cauſam nobis ſignifices*, and yet the Juſtices, eſpecially *Stone* did award that Execution ſhould be iſſued forth, 17 *E.* 3. 45. *Fitz. Execution* 76.

In a *Scire facias* to execute a Fine, the Tenants caſt into the Court a Writ of Error. And it was debated whether it ſhould be allowed or not, becauſe that Execution is awarded by the granting of the *Scire facias*, and yet at the laſt, the Writ of *Error* was allowed, for that thereby the hands of the Court were cloſed, and if they did proceed afterwards, it was to no purpoſe, *Vide* 20 *H.* 6. 4. *Fitzh. Execution* 5. and *Barre* 27. *acc.*

Erroneous Judgment was given in a Writ of annuity, and a *Scire facias* was brought to execute it, the Defendant would have pleaded Error which was in the firſt Judgement, and the opinion of the Court was, that he could not be admitted ſo to do, but that he was put to his Writ of Error upon the Originall Judgement; for the Judgement being in force the Court ought to award execution, 11 *H.* 4. 4. & 47.

In Detinue of a Statute, the Plaintiff recovered the Statute, the Defendant brought a writ of Error, and depending that, the firſt plaintiff ſued forth Execution upon the Statute, and the body of the defendant

was

was taken in Execution, the opinion of the Court was, that he could not be discharged out of execution, although the execution was sued forth pendant the Writ of Error, for it was his folly that he sued not forth a *Supersedeas* to the Execution, but the opinion of the Court was, that after the Writ of Error is sued forth and allowed, Execution cannot be awarded upon the first Judgement, because by the Writ of Error the Record also is removed, and then the Court can do nothing, 7 *H.*6.42.

In Trespasse the plaintiff recovered, the Defendant sued forth a Writ of Error returnable, *Mense Mich.* and afterwards sued forth another Writ of Error returnable, 15 *Martini* the same Term, and because the same did sound to be in delay of the party, therefore the Judges awarded Execution, but it was there said, that the surest course is to sue forth a *Supersedeas* to stay the Execution out of the Kings Bench, and *Brook* in abridging of the Case made a wonder that the hands of the Judges were not closed by the accceptance of the Writ of Error, 19 *H.* 6,7.*b.*

In Detinue the Plaintiff had a Verdict for him for the thing demanded, and 40 s. damages, if the thing might be obtained, if not, then 20 l. damages for the whole, and a *Distringas* issued forth for to deliver the thing demanded returnable, *Octab. Hillarii*, and at the day the Sheriff returned issues, and the Defendant appeared not, nor did deliver the thing, and after the fourth day from *Octabis* came a Writ of error, and the Plaintiff prayed judgment and execution of the 20 l. and to have the same entred upon the fourth day, which was before the VVrit of error was brought, but he could not obtain it, for that by the coming of the writ of error, the hands of the Court were closed, 22 *H.*6.41.*b.acc.*

An information was in the Exchequer against the Merchants of the *Stillyard* and judgement was given against them, and they brought a writ of Error and a *Supersedeas* to stay the execution, and the Kings Attorney prayed execution but could not obtain it, for the bringing of the Writ of error was a *Supersedeas* in it self, 1 *H.*7.15. and 16.*acc.*

A man brought a Writ of error with a *Scire facias ad audiendum errores*, and the Defendant appeared, and afterwards the Plaintiff made default, and the Defendant sued a *Scire facias* to have execution of the judgment against the plaintiff, and the defendant in that *Scire facias* who was plaintiff in the writ of error, made default again, whereupon execution was awarded, and a *Capias ad satisfaciendum* issued, and thereupon the defendant brought a new writ of errror, and prayed a *Supersedeas* to the Sheriff, that whereas he was arrested by the *Capias ad satisfaciendum*, that he might deliver him out of execution, and the opinion of the Court was, that the *Supersedeas* was not to be allowed where the party is once in execution, and especially in that Case, because the party had made severall defaults both in the *Scire facias* brought by himself, and also in the *Scire facias* which was brought against him; for if the *Supersedeas* to the execution should be allowed, then the party might in another Action brought against him plead, that the plaintiff had once execution

on againſt him, and it was alſo ſaid, that execution lawfully once had ſhall not be avoided, becauſe it is the effect of the whole matter, and Action, but it was agreed, that if execution had not been executed, and the party had not been taken, that then the bringing of the new writ of error, and of the *Superſedeas* for the ſtaying of execution upon the Judgement had been well brought, 2 *H.*7.12.*a. & b.*

A woman brought a writ of Dower and recovered, and upon a ſuggeſtion made, that the husband died ſeiſed, a writ of *Enquire of Damages* iſſued forth, and before the Return thereof a writ of error was brought; In this caſe there were two points debated *Paſch.* 17 *Car.* in the Kings Bench in *Stewards* Caſe, the firſt was whether a writ of error would lie before the writ of *Enquire of Damages* was returned or not, and it was reſolved that the writ of error was well brought and would lie, becauſe the Dower in judgment is *quod recuperet*, which judgement doth determine the Originall, and damages are onely by the Statute of *Merton*, which doth not alter the judgment, and although it was objected that then the damages ſhould be loſt. It was holden that the damages were not loſt, for that after the record removed into the Kings Bench, the Iudges there might award a writ of *Enquire of damages*. 2. It was reſolved in that Caſe, that the writ of error it ſelf was a *Superſedeas* to the writ of *Enquire of damages*.

A writ of error was brought to reverſe a judgment given in *Ireland*, if a tranſcript be made of the record, although the record it ſelf be not brought over for fear of loſing of the ſame by water, yet it was reſolved by the Court of Kings Bench, *P.*15 *Car.* that the very being of the writ of Error was a *Superſedeas* to the execution of the ſaid judgement.

Where the whole Record ſhall be removed and where not, where the Originall, where not; and where another Record ſhall be removed with it.

VPon a Writ of error ſued, the record it ſelf ſhall be removed, and not the tranſcript of the record, for upon a tranſcript of a record a man ſhall not aſſign error, if it be not upon a Writ of Error, ſued upon a tranſcript of a Fine, for the error may be aſſigned upon the Tranſcript of the Note of the Fine, *F.N.B.* 20*f.*

He in the remainder brought a *Scire facias* to execute a Fine, and upon the default of Tenant for life, one prayed to be received, and was, and died, his heir prayed to be received being within age, with the advantage of his age, and in error brought upon the proceedings in this ſuit exception was taken, becauſe that the record of the Fine was not removed, and the exception diſallowed; for notwithſtanding the *Scire facias* brought and the remover by error, he in the remainder may have a

Scire

Scire facias in the Common pleas, or ſue Execution here at his election if it be not found for him. Alſo it was ſayd by *Green*, That if a man bring a *Formedon* in the Remainder, the Deed ſhall be entred upon Record, and in Error brought ſhall be removed as parcell of the Record. And note, That it is there ſayd, that the Originall ſhall not be removed upon error brought upon the body of the Record, contrary (as appeareth 9 *H.6.*) if error be aſſigned in the Originall, no more ſhall a Writ judiciall, or the Record of the Eſſoin, for that theſe remain with the Clarks, 20 *E.* 3. *Error* 2. 24 *E.* 3. 24. *Br. Error* 86 *acc.* But in an Aſſiſe the whole Record ſhall be removed.

In an Aſſiſe of Darrein preſentment, the praties did demur, and it was found for the Plaintiff, and he had a writ to enquire of the damages, and mean betwixt that and the *Niſi prius*, a Writ of Error was brought, and the matter was returned, that the Juſtices had not the whole Record, and yet ſo much of the Record as was before them was removed, and it was holden that they might redreſſe the errors in the principall Record, as in coſinage, or *Quare impedit*, if one recover by default, yet the damages ſhall be enquired of: but if a Writ of Error be brought, nothing ſhal be removed but only the principall part of the Record, *vi.* 17 *E.* 3. 5. & 19. *Fitzh. Error* 71.

Upon Error in ancient demeſne, the Originall and the whole Record, ſhall be removed, by *Knivit*, in 34 *Aſſ.* 7. And by the ſame reaſon, if it be removed out of the common pleas into the Kings Bench. So it is of error before Juſtices of Aſſiſe, but *Ireland* ſhall not ſend the originall, but only the tranſcript of the Record, *vi.* 5. *E.* 2. *Fitzh. Error* 89. *acc.*

If Error be ſued in Parliament out of the Kings Bench, the Record ſhall ſtill remain with the Juſtices, and the ſame may be brought in Parliament by the hands of one of the Judges of the Kings Bench, or a tranſcript of it, *vi.* 8. *H.* 5. *Error* 88.

A Writ of Error was brought in the Kings Bench upon a recovery had in an Aſſiſe, and the Judgment there affirmed. Afterwards the party brought a Writ of error in Parliament, upon the Judgment had in the Kings Bench: and the cheif Juſtice brought the Record in Parliament, and alſo a Tranſcript of it, and after the ſame was examined there, the ſame was ſent back into the Kings Bench, and the tranſcript only remained with them in Parliament, upon which a *Scire facias* was awarded, *vi.* 23. *Eliz. Dyer*, 375.

In a Writ of Entry of land and rent, as to the Land, the parties were at iſſue, and it was found for the Demandant, and for the Rent the Plea did depend, and a *Scire facias* was awarded for the land, and the Sheriff returned *Scire feci*, And it was holden, that as to the land, the party might have execution, notwithſtanding that the other the rent did depend, for that the one was not conſiſtent upon the other, and in ſuch caſe, the party may have a writ of Error thereupon, and ſhall have the Record of the Count, and of the plea removed, as in debt upon an obligation and contract, by

ſeverall

ſeverall Counts, and ſo it is in the like caſes, where there are ſeverall *Precipes* in one Writ or ſeverall Counts, by *Priſot*, but where there is but one Writ or one Count, there it is otherwiſe, for they cannot have the Record in the Kings Bench, and wee here alſo, and therefore *Priſot* ſayd, That if the party would bring a ſpeciall Writ of Error, they would be adviſed upon the view of it, and if there was cauſe then allow of it; 36 H. 6. *Fitzh. Fieri facias*, 3. But in a *Quare impedit* brought againſt diverſe perſons, who plead ſeverall iſſues, and one is found for the plaintiff, the Defendaut ſhall not have a Writ of Error thereupon, untill the other iſſues be tryed, 34 *H.* 6. 41. in the Lord *Cromwells* caſe.

A Fine was levied the laſt Term, and the party did ſuggeſt, that hee then was, and yet is within age, and prayed a Writ to the Juſtices of the Common pleas, to ſend the tranſcript of the note into the Chancery; and afterwards it came into the Kings Bench, and the party aſſigned Errors, and prayed a *Scire facias ad audiendum errores*, and it was doubted whether they might award a *Scire facias* upon the tranſcript, to reverſe it: But a *Scire facias*, to execute a Fine upon the Tranſcript they may award. And yet at laſt, becauſe the Fine it ſelf ſhall not be removed, becauſe that a *Quid juris clamat* ought to be awarded before it ſhall be ingroſſed, and if it ſhould be removed, then it ſhould never be ingroſſed, therfore the Writ was awarded good and by *Parne*, when the plea is come to that point, that the note ſhall be reverſed, then we may ſend for the Note. *Quod nota*, 16. E. 3. *Fitzh.* 10. *Record* 35. And if it be affirmed, then nothing ſhall be done here, but the Proceſs ſhall continue in the Common pleas, *vi.* 21 *E.* 3. 24. *Fitzh. Error* 76. *acc.*

In an Aſſiſe, It was found that the Defendant did diſſeiſe the Plaintiff with force, for which he recovered damages, to have execution of the damages, the whole Record was recovered into the Common pleas, and when the Record was there within the year, a *Capias pro fine* was awarded for the King, and the party was taken and put into the Fleet, and the Plaintiff prayed that he might remain in execution for the Plaintiffs damages, and it was adjudged that he could not be in Execution for the party, but the plaintiff was put to his *Scire facias*, and there it was ſayd by *Frowick*, that if a Record of the Common pleas be removed into the Kings Bench by Error, and afterwards judgement is affirmed within the year, yet the party who recovered ſhall not have Execution by *Fieri facias*, nor *Capias*, nor *Elegit*, but muſt ſue out a *Scire facias*, becauſe it is in another Court then where the Judgment was given, 15 H. 7. 5.

When the Juſtices ſhall proceed to the Examination of the Errors.

IF he in the Reverſion bringeth a Writ of Error the Juſtices ſhall proceed to the Examination of the Errors during the life of the Tenant for life, 20 *E.* 3. *Fitzh. Error* 2.

A Writ of Error was brought againſt the Heir, being Tenant for life of the moyety of the Land, and a *Scire facias* againſt a ſtranger of the other Moyety, and the heir being in ward of the King, and within age, prayed his age and had it, and yet the Juſtices did go to the Examination of the Errors as to the ſtranger, and ſo it ſeems to be, if Error be aſſigned in the Writ, 9 *H.* 6.46. *and* 19 *H.* 6.25. in the Lord *Dudleyes* caſe.

In a Writ of Errour when the Record cometh into the Court, the Plaintiff hath all that Terme to aſſign his Errours, yet if he doth not ſue forth a *Scire facias ad audiendum Errores* againſt the Defendant with a return thereof the next Tearm; the whole matter is diſcontinued, *vi. F. N. B.* 20. *g. acc.*

Error was brought againſt one, who by the Writ was ſuppoſed to be dead, for which cauſe a *Scire facias* iſſued againſt the Heir and Ter-tenants, and the Sheriff returned, that the heir had nothing by which hee might be warned; and the Ter-tenants did appear, and whether they ſhould proceed to the Examination of the Errors, untill the heir came in and appeared, becauſe it might be, that he had a Releaſe to plead, was the doubt, and at laſt; foraſmuch as they did ſhew, that their poſſeſſion was by a feoffment, and not by wrong; it was awarded that a *Scire facias* ſhould iſſue forth againſt the heir at the ſuit of the feoffees before they proceeded to the examination of the Errors; but contrariwiſe it had been if they had entred by abatement, for then they ſhould not take advantage of a Releaſe made to the heir, *vi.* 8 *H.* 4. 18. *acc.*

If the Plaintiff appear upon the *Scire facias ad aſſignandum Errores*, there the Court ſhall proceed to the examination of the Errors, but if he make default, the Defendant ſhall have Execution, for the Court is not to examine the errors although they be apparant, but at the aſſignment of the Plaintiff as it is agreed, 20 *H.* 6. 18.

In a Writ of error, one *Scire facias* was ſued forth againſt the party, and another againſt him who was Tenant, returnable at at a certain day, at which day the partyes appeared, and the Tenant pleaded Joyntenancy with another, the Plaintiff prayed that the Court would proceed to the examination of the errors, and it was holden that they might not proceed to the Examination of the errors, for that it would be inconvenient before the plea of the Tenant were tryed; for he might plead ſomething which might bar the Plaintiff of his Action, and alſo if the plaintiff and he who were parties were of Covin betwixt them, and the Plaintiff will aſſigne error, and the Defendant might alledge diminution of the Record and would not, the Juſtices ſhould then adjudge that for

error,

error, then the Tenant ſhould be at a great miſcheif, and therefore it was declared by them that they would not proceed to the examination of the errors till the Tenants Plea was tryed, 30 *H.*6.2. *b.*

In 21 *H.*6.34. by *Paſton*, If one bring a Writ of error in the Kings Bench, to reverſe a judgment given in the Common Pleas, and hath a *Scire facias* againſt the Defendant, *Ad audiendum Errores*, ſuch a day, at which day the Defendant appears, and the Plaintiff makes default, the Defendant ſhall have execution without anſwering to the errors afterwards aſſigned, but if the Plaintiff be non-ſuit before he bring the *Scire facias*, and then the Defendant ſueth the *Scire facias* to have the execution of the Judgment, there the Plaintiff may aſſigne errors, and the Defendant muſt anſwer the errors.

In a falſe judgment againſt an Abbot, the Plaintiff was non-ſuit, and the Abbot had a *Scire facias* againſt the Plaintiff, to ſhew cauſe why he ſhould not have execution returnable, 15 *Paſch.* at which day the Plaintif appeared and aſſigned errors, and tendered Surety to ſue with effect, and prayed a *Scire facias* againſt the Abbot, *Ad audiendum errores*, the opinion of the Court was, that he might aſſign the errors againſt him without a *Scire facias*, beeauſe they had day by the Roll. *Quere*, whethere be a difference betwixt falſe judgment and a Writ of error. And note, That the opinion is *H.*23 H. 6. That if the Plaintiff in falſe judgment be non-ſuit, the other party may preſenty ſue forth execution without a *Scire facias.*

If in a *Scire facias ad audiendum errores*, the Defendant do make default, the Juſtices may proceed to examine the errors, as appeareth by the book, in 14 *H.*7.33. but there the caſe was, That the Husband and Wife brought an Action of Debt againſt *H.* who was outlawed, and he brought a writ of error in the Kings Bench, to reverſe the Outlawry, and had a *Scire facias ad audiendum errores* againſt the husband and wife, and the Sheriff returned the husband dead, and that the wife was married, who did not appear, it was moved that the Judges might proceed to the examination of the errors, for the husband being dead, no *Scire facias* could iſſue forth againſt his Executors, and when the wife is ſummoned and doth not appear, there is no reaſon that the party ſhould be vexed for her not appearance. But by *Frowick*, Juſtice, the Writ of error ſhall abate, and the party put to ſue a better Writ, *vi* 14 *H.*7.33. *ac.*

Cheny levied a fine, and afterwards brought a Writ of error to reverſe it: And for error aſſigned, that he was within age at the time of the fine levied, and had a *Scire facias* againſt the Conuſee, *Ad audiendum errores*, and upon two *Nichells* returned, the Court d d proceed, and by witneſſes and inſpection did reverſe the fine, 3 *Eliz. Dyer* 201.

Grandfather, Father, and two Daughters, the Grand-Father levied a Fine *Come ceo*, &c. of Lands in *Cheſter*, with a Remainder to himſelf for life, the Remainder to the Father and his heirs males, the remainder to the el-

deſt daughter in taile; the remainder over, the Grand-Father dyed, the Father dyed without iſſue male, the eldeſt daughter entred; the youngeſt daughter in her own name, and in the name of her ſiſter, as coſin and heir to the Grand-father, brought a Writ of Error returnable in the Kings Bench to reverſe the fine (directed to the Juſtices, and not *Camerario Ceſtrir. quod nota*) which was returned with the Record, and a *Scire facias* iſſued forth againſt the heir of the conuſee, *Ad audiendum errores*, who had nothing in the Lands, and none againſt the Ter-Tenant, the eldeſt daughter not appearing, ſhee was ſummoned and ſevered. In this caſe it was holden,

Firſt, That the Writ of Error was well brought here in the Kings Bench, for that Errors are excepted in their Charters of *Cheſter*.

Secondly, It was holden that the Plaintiff might have had a *Scire facias* againſt the Ter-Tenant, for otherwiſe if he have Judgement that he be reſtored to the Land, he cannot have execution; for if the Tenant be put out without ſummons, he may have an Aſſiſe, and it may be that he hath a releaſe to plead, which ſhal eaſe the Court from examination of the errors, and thereupon a *Scire facias* was awarded againſt the eldeſt Siſter, as Ter-Tenant, and afterwards the heir of the Conuſee did plead to the errors *In nullo erratum eſt*, and the Ter-Tenant was ſummoned *Ad audiendum errores*, *vi.* 14 *Eliz. Dyer*, 220. 221.

Three men recovered in an Aſſiſe againſt *B.* and others, *B.* and the other brought a Writ of Errour in the Kings Bench, and pendant the Writ, one of the Plaintiffs in the Writ of Error dyed, and the Court not knowing of his death, proceeded to Examination of the Errors, and did reverſe the Judgement: And afterwards the Plaintiffs in the Aſſiſe brought a Writ of Error in the Kings Bench, two queſtions were moved in that caſe.

Firſt, If a Writ of Error did lye upon a Writ of Error in the ſame Court, before the ſame Juſtices.

Secondly, If one of the Plaintiffs dye pendant the Writ, if the whole Writ ſhould abate. It was ſaid in that caſe that the Writ was well brought and that it did not abate, becauſe the Writ of Error was in effect but in the nature of a *Certiorare*, for by the Writ, the Judges of the Kings Bench had only a ſpeciall authority to proceed to the examination of the Errors, and ſo it was adjudged. *vi.* 2 *R.* 3. 1. and 2 *R.* 3. 20. in a *Scire facias*.

It was holden by *Sute* Juſtice, *Mich* 28 *and* 29 *Eliz.* in *Bilford and Deddingtons* caſe, that if a Record be once before the Juſtices, and Errors therein be aſſigned, the Juſtices may proceed to examine the errors, although no Writ be brought. But *Clench* Juſtice held, that there ought to be a Writ of Error before any judgement can be given to reverſe the Errors in the firſt Record.

A *Scire facias* was brought by an Infant to reverſe a fine by him levied within age, a protection was ſhewed forth for the King, *De ſervitio Regis*, yet becauſe the protection might be continued from year to year, and the Plaintiff during that time might come of age and ſo might be barred

barred by his Fine, the Court adjudged that they might proceed to examine the Errors notwithſtanding the protection, 21 *E.*3.28. *ac.*

In the Caſe which was *P.* 15 *Car.* in the Kings betwixt the Earl of *Oxford* and *Waterhouſe*, in a Writ of Error to reverſe a Fine, the Plaintiff for Error alledged, that at the time of the Fine levied he was beyond the Seas, the Defendant alledged that he came into *England* within the five years, the Judges proceed to examine the Errors, and being at iſſue whether he came into *England* within the five years or not, the Jury found that he came over in *July* and not in *Auguſt*, which was the time in the iſſue joyned, yet the Court was clear of opinion that the Fine could not be reverſed upon that Writ of Error, for although the Jury found that he came over in *July*, yet the ſubſtance of the matter was, whether he was in *England* ſo as he might have made his claim, or reverſed the Fine for ſome other cauſe, and therefore in that caſe it was adjudged that the Fine ſhould bar him.

Who ſhall have and maintain a Writ of Error, and who not: and againſt whom the Writ doth lie.

NOne ſhall ſurmiſe Error, or have a Writ of Error but he who is party or privy to the judgement or eſtate, 21 *H.* 6.29. *b.* 22 *E.*4. 31.32.

Of Error in the Record, none ſhall have advantage but the party or his heirs, 9 *E.*4.14.*b.*

If the Tenant in a Formedon vouch one, and he voucheth over, and ſo there be ſix or ſeven vouchers, every one of the vouchers ſhall have a writ of Error upon the Judgment given againſt the Tenant, becauſe every one of them ſhall recover in value, by *Vavaſour*, but the reaſon of that Caſe is given by *Bryan*, becauſe they are privy, for they come in by courſe of Law, but if in a Formedon the Tenant make defence, and the Demandant ſaith, that before the Tenant any thing in the Land, that one *A.* was ſeiſed and enfeoffed the Tenant with warranty and prayeth that he be ſummoned, if in that Caſe Judgement be given againſt the Tenant, and the Tenant have Judgment over, the Tenant ſhall not have a writ of Error for the Errors which was betwixt the demandant and the vouchee, for the vouchee doth not come in by courſe of Law, and the Tenant was not privy, 22 *E.* 4. 32.*a.*

Piers of *S.* brought an attaint againſt S. *de* R. upon a Verdict which paſſed upon a writ of Entry *ſur diſſeiſin* betwixt the ſaid *Piers de* S. and S. *de R.* in which VVrit of Entry *S.* did anſwer as Tenant, and yet notwithſtanding becauſe that S was not Tenant the day of the Attaint brought, nor never after, the writ of attaint did abate, and yet the attaint vvas freſhly brought vvithin half a year after the Judgement in the

first

firſt vvrit *6 Aſſ. plea* 6. and the reaſon of that Caſe is given by *Fitzh.* in his *N.B.* 107. *k.* becauſe the Attaint is maintainable onely againſt the Tenant of the Land wth out naming him vvho vvas party to the Record, and in that Caſe he vvas not the Tenant, but in that Caſe it is agreed, that a vvrit of Error is good againſt him vvho vvas Tenant of the Land at the time of the Judgment, although at the time of the vvrit brought, he hath nothing in the Tenancy, *vide 6 Aſſ.* 6. 14. *Aſſ.* 2. *Br. Attaint* 59.

If a man hath iſſue tvvo ſons, and the eldeſt entreth into Religion, and the father dieth, and a Recoverie is had againſt the younger Son of the Land by erroneous Judgement, and aftervvards the eldeſt Son is deraigned, the eldeſt Son ſhall not have a vvit of Error upon the Recovery, but in that Caſe the younger Son ſhall have the vvrit of error, becauſe he is party and privy to the Recovery, and vvhen he hath recovered and reverſed the Judgment, the eldeſt Son may enter upon him, 9 *H.* 7. 24. *Br. Error* 154. *F.N.B.* 21. *L.* but *Quare* for *Hill* 18 *Eliz.* in *Henninghams* Caſe, the ſpeciall heir ſhall have the vvrit of Error againſt the opinion of 9 *H.* 7. 24. *vide* 1 *Eliz. Dyer* 90. *Plow. Cogitat.* 24. *acc.* that the heir at lavv ſhall have the vvrit.

3. *H.* 4. 19. The daughter ſpeciall heir to the eſtate tail ſhall have the Writ of Error, although there be a ſon who is heir at the Common Law, againſt the opinion of *Forteſcue*, 22 *H.* 6. 23. that the heir at the Common Law ſhall have Attaint and Error.

The Bailiff cannot have a writ of Error upon a judgement given againſt the principall, becauſe he was not privy to the Judgement, but he ſhall have allowance thereof by way of Plea, *in a Scire factas* brought.

In an *Aſſumpſit* Judgement was given againſt the Principall in the Kings Bench, and after a *Scire facias* againſt the Bail, afterwards they both joyn in a writ of Error, and it was adjudged that the VVrit of Errour ſhall abate, becauſe they could not joyne, and then it was defined that the Bail might have a new writ of Error by himſelf upon the Record *coram vobis reſidet*, which was denied as well becauſe a *Scire facias* is not an action in which a Writ of Error is given in the Exchequer chamber; and alſo becauſe the Record doth remain in the Kings Bench, and not before them, *Forreſt* and Sir *James Sandlands Caſe*, *Hob. Reports* 84. yet it was ſaid, that it had been rated in one *Matthews* Caſe, that ſuch a Writ of Error had lien for the Bail.

If erroneous Judgement be given againſt Tenant for life, he in the Reverſion after the death of Tenant for life ſhall have a Writ of Error and reverſe the Judgement, *vide* 4. *Ma. Dyer* 1. and ſee 20 *E.* 3. *temp. Error* 2. he ſhall have Error during the life of Tenant for life, 8 *H.* 4. 56. *acc.*

If the Demandant in a Formedon be barred by Verdict or demurrer, his Iſſue may have a new Writ of Formedon, and ſo if he be barred in a Writ of Error upon a Releaſe of his Anceſtor, his Iſſue ſhall have a new

Writ

Writ of Error, for he claims in not onely as heir, but *per formam Don.* and by the Statute of *Weſtminſter 2. cap.* 2. and ſhall not be barred by faint falſe or pleading of his anceſtor, *C. 6 part 7. in Ferrers Caſe.*

Sir *Ralph Rowlet* being Tenant in Tail with the remainder over ſuffered a Recovery to the uſe of Sir *Nicholas Bacon*, and to avoid Error did releaſe all Errors, and afterwards brought a Writ of Error, and was barred by the Releaſe, but it was adjudged that the ſame did not bar the Iſſue in Tail of his Writ of Error, for that the Right of the Tail was not deſtroyed and in that caſe it was holden, that if the iſſue in Tail fail, that he in the remainder by the Statute of 9 *R. 2. cap.* 1. might maintain a Writ of Error, although he was not party to the Record, 3. *Eliz. Dyer* 188

If pendant the Writ of Error, the Tenant do convey the Land unto another in Fee, yet if erroneous Judgment be given, a Writ of Error lyeth by the Feoffor, becauſe the Demandant is eſtopped to ſay, that the Tenant did alien the Land, pendant the Writ, becauſe the Tenant as to the Demandant was Tenant, and if the Demandant doth recover by erroneous Judgement, if after the Feoffor doth enfeoff the Demandant. *Quere* in that Caſe whether the Tenant ſhall have a Writ of Error, 20 *Aſſ.* 2.

The Tenant brought a writ of Error in the name of the heir, and not in his own name, *Kellaway* 193.

If a man be bounden in a Recognizance, Statute Merchant or Staple, and maketh a Feoffment in Fee and Execution be ſued, if there be Error in the Execution the Feoffee ſhall have a Writ of Error, and not the Recognizor, for the Feoffment made after the Recogniſance is good, and he is the party who is grieved, for the Lands are extended in his hands, and if the Feoffee ſhould not have a writ of Error the Law were defective, and he without remedie, for the Recognizor cannot not have Error, becauſe the Land is not extended in his hands, and it is not like where a recovery is had againſt one, or an Action is brought againſt one, and pendant the writ or after the Recovery he maketh a Feoffment for three, if there be Error the Feoffee ſhall not reverſe the Judgment and recoverie, for that the Feoffment pendant the writ, or after was not good, 17 *Aſſ.* 24. *ſee Error* 71. *vide* 18 *E.* 3. 25. *b. acc* he who is the party grieved ſhall have the writ of Error, although he be a ſtranger to the judgement.

If Erroneous judgment be given againſt a Baſtard, and he dieth without Iſſue, no body ſhall maintain Error, 15 *Aſſ.* 8. *by Pole.*

17 *Aſſ.* If the Iuſtices award Execution upon a Statute Merchant or Staple, and the Sheriff extendeth the Land, and doth not return it, an Aſſiſe lyeth againſt the Sheriff, and the party may ſue forth a new Execution.

The Succeſſour of an Abbot, Prior, or Parſon, or the like Corporations, ſhall have a writ of Error of a judgment given againſt their Predeceſſors

deceſſors for ſuch things as touch the Succeſſion or Corporation, 12 *H.* 8. 8 And by *Pollard*, the Patron may have Error although he was not prayed in aide of. And *vi. Fitz. Error* 72. in a *Quare impedit* brought by the King againſt the Patron and Incumbent, and Iudgement was given only againſt the Patron, the Parſon brought a VVrit of Error; but the reaſon there was becauſe he was party to the VVrit, though he were not party to the Iudgment; but if he had not bin party to the VVrit he could not have had Error, as in Attaint, if he be not privy to the VVrit he ſhall not have Attaint, 44 E. 3. 6. and 7.

If a *Precipe quod reddat* be brought againſt one, and pendant the VVrit, he make a Feoffment in fee to another, and afterwards erroneous Iudgement is given againſt him, he ſhall have a VVrit of Error againſt his own Feoffment, for that the Error is Collateral to the tytle of the Land, *Vide C. 1. Part* in *Albanies Caſe* 12. *Aſſ.* 41 *&c.*

Execution was ſued forth upon a Statute before the time it ought to have bin ſued, and the Feoffee of the Land brought a VVrit of Error to reverſe the Execution. It was objected, that the VVrit of Error did not lye becauſe he was not party nor privie to the Record, yet becauſe he was the principal who was grieved by the Execution, it was adjudged that the VVrit did lye, 18 *E.* 3. 25. *b.*

In 34. *Eliz.* in the Kings Bench, the caſe betwixt *Shirrington* and *Worſley* was this, *Sherrington* did recover in an Action of Debt againſt *Worſley*, who aliened the Land to one *Charnock*. Afterwards an *Elegit* was awarded upon the Roll, *Charnock* brought a VVrit of Error to reverſe the Execution, it was objected that VVrit did not lye, 1 becauſe he was a Stranger to the Record, 2. became he came in, under, and after the tytle of Error, yet notwithſtanding the VVrit was admitted good, and the Party forced to plead to it, for that *Charnock* was the Party which was greived by the Execution.

If an *Exigent* be awarded *erronice* againſt the Teſtator, it ſtands in force until it be reverſed, and the Party ſhall forfeit his goods. But his Executors or Adminiſtrators, after the death of the Party, may have a ſpecial VVrit of Error reciting all the ſpecial matter, and reverſe the Outlawrie, but a general writ of Error they cannot have, 34 *Eliz.* in *B. R.* adjudged, *&c.* But if a man be outlawed in caſe of Felony there the Executor cannot reverſe the Attainder for Error, and ſo reſtore the blood by *Doderidge* and *Jones* Iuſtices in 3. *Car.* in the Kings Bench, where the Caſe was, That *W. Iſley* was ſeiſed in Fee of the Mannor of *Sandridge* in the County of *Kent*, and had iſſue *Henry Iſley*, who was indicted of Robery, 18 of *Eliz.* and 19. of *Eliz.* the Record of the Indictment was brought into the Kings Bench. And thereupon 20 *Eliz. Henry Iſley* was outlawed, *William Iſley* dyed ſeiſed, and *Henry Iſley* entred into the Land as Son and heir, and being thereof ſeiſed, deviſed the ſame to *I. S.* in Fee, who conveyed the Land to one *Brooken*. *Brooken* brought a VVrit of Error to reverſe the Outlawrie of *Henry Iſley*. And it was adjudged *Trin.* 3. *Caroli* in the Kings

Kings Bench. That *Brooker* the Purchaſor could not reverſe the Outlawrie, and reſtore the blood by the VVrit of Error.

Executors or Adminiſtrators ſhall have a Writ of Error upon a Judgement, given againſt their Teſtator for Debt, or Damages, *F. N. B.* 21 *M.*

Husband and Wife joynt tenants of a Mannor, and to the heirs of the body of the Husband, the Remainder to be in tail. A Recovery is had in a Writ of Entre in the Poſt, againſt the Husband only in the life of the Wife, with voucher. *B.* in the Remainder is attainted of Treaſon, and executed, and afterwards it is enacted by Parliament, that he ſhall forfeit all ſuch Mannors, Lands, Rights, *&c.* which he had or ought to have in fee or in tail in uſe, or poſſeſſion from the day of the Treaſon committed. Afterwards the Husband dyed without iſſue, and then the Wife dyed, the Queen granted to *G.* the Son of *B.* and to him reſtored the Mannor which ſhe had by the Attainder. And afterwards the Queen brought a Writ of Error againſt the heir of the Survivor, Recoveror to reverſe the Recovery, and in this caſe diverſe points were reſolved by the Juſtices. 1. That the Writ of Error was not given to the Queen by any words in the Act of Attainder, becauſe the ter-Tenant was in by tytle, and the entrie of the perſon attainted was not congeable, and a rule was then taken, that ſuch a Right for which the party had not any remedy, but by Action to recover the Land, could not eſcheat or be forfeit at the Common *Law*, and by the general Act of Attainder Rights of Action were not given to the Queen. 2. That the Writ of Error being a bare Action with conſiſts more in privity then an Action which is accompayned with a Right was not given to the Queen by the general words of the Act. 3. That he in the Remainder expectant upon an eſtate in tail after the Statute of Donis might have a Writ of Error as an incident, Jureſtie given unto him according to the Rule of the Common Law. 4. That upon the Statute of 9 *R.* 2. *cap.* 3. he in the Reverſion or Remainder upon an eſtate tail ſhould not have a VVrit of Error, for he is out of the Intention of the Act, becauſe an eſtate in tail may be poſſibility continue for ever. 5. That by the general grant of the Mannor, and of all intereſt claimed and demand therein, a Writ of Error will not paſſe, but if it will paſſe at all it muſt paſſe by expreſſe words of VVrit of Error ſee 3. Part the Marquis of Wincheſters Caſe.

In Debt brought by *Quo minus* in the Exchequer, the Plaintiff makes a Retraxit in proper perſon: *viz. Fatetur ſe in Curiâ hic ulterius nolle proſequi*, but no Amercement is ſet upon the Plaintiff, and Judgement is given that the Defendant *eat ſine die*, which is Error. Yet the Plaintiff may have a VVrit of Error, and reverſe the Judgement for no imperfection, is ſaved in ſuch Caſe by any Statute when Judgement is given upon *Retraxit*, but if in any Action brought the Tenant do diſclaim, he ſhall not have a VVrit of Error againſt his Diſclaymer, for by his Diſclaymer he hath barred himſelf of his Right to the Land; againſt which he

cannot have a VVrit of Error to have Reſtitution. *Vi. C.8.part. Beechers* Caſe.6 *E* 3.7.*F.N.B.*22.*acc.*

A *Fieri facias* iſſued forth againſt the Defendant who dyed, and afterwards the Sheriff levyed the Execution againſt his Adminiſtrators,and the Adminiſtrators brought a VVrit of Error to reverſe the Judgement. 6 *E.* 6.*Dyer* 76.*Vincents* Caſe.

A VVrit of Error doth not lye againſt a Stranger to the Judgement,as a VVrit of falſe Judgement doth, without naming him who was Tenant and party to the Judgement. But in a VVrit of Error he ought to name him who was Party to the Judgement, whether he be Tenant to the Land or not.*F.N. B* 81.and 107 *R. A.* VVrit of Error muſt be ſued forth againſt him who was party,or his heir, or Executors, if the ſame be in a perſonal Action, otherwiſe the VVrit ſhall abate.

In what Court A Writ of Error ſhall be brought, and to whom it ſhall be directed, and the manner how.

ERror in Proceſs in the Kings Bench,or for the default of the Clark may be reverſed in the ſame Court by a Writ of Error before the ſame Iuſtices. Alſo in the common Pleas after Iudgement given, the Judges there may reverſe their Iudgement the ſame Term for the like Errors. But Errors in matters of Law muſt be reverſed in other Courts,and before other Judges, *Vi.*1 *E.*4.41.7 *H.*6.28. in *Hydebrans Caſe.* 2 *R.*3.1. in *Bengers Caſe.*19 *H.*6.2. 15 *E.*4.7. and 8.*acc:*

Errors in Chauncery ſhall bee reverſed in Parliament. But the ſame is to be underſtood where the plea is holden there in the Petty Bagg, which is a Court of Law, where the partie hath priviledge, for upon matter of *Sub-pœna*, no Writ of Error lyeth,37 *H.*6.13.

A *Scire facias* was in Chancery to have execution of a Recogniſance, the Defendant pleaded a Defeazance which was dated before the Recogniſance, but delivered after, which was not received but Execution awarded, for which cauſe the Plaintiff brought a Writ of Error in the Kings Bench, and reverſed the Judgement. Note. Both Courts are *Coram Rege*,14 *Eliz. Dyer* 315.

Falſe Judgement given in Wales ſhall be reverſed before the Juſtices errant there,but if there be no Juſtices there, then it ſhall be reverſed in the Kings Bench. But by *Fortèſcue* and others it ſhall be reverſed in Parliament,19 *H.*6.12.

Note by *Needham*,if a Writ of Error be directed to the Juſtices of *Cheſter*,in ſuch Caſe,the Juſtices ſhall have day within which 3. Counties ſhall be

be determined to reverſe or affirm the Iudgement, and if they will reverſe it, the Record ſhall never be ſent into the Kings Bench nor elſe where, but the Iuſtices of *Cheſter* ſhall give Iudgement. But if they will affirm it, then the Record ſhall be ſent from thence into the Kings Bench, and if it ſhall be reverſed there, they ſhall pay 100 l. 34 *H.*6.42.

It is holden in 5 *E.*2. *Fitz. Error* 89. That no Writ of Error ſhall be brought here of a Iudgement given in *Ireland*, if not upon the default of the Iuſtices of the Kings Bench in *Ireland*: and note, that there it is ſaid, that there is no Original here, but the ſame remains there, and therewith agreeth. 37. *Aſſ* 5. *Fitz. Aſſiſe* 328.

Upon a Record removed by a Writ of Error out of a County *Palatine*, Execution ſhall be awarded in *Banco* by *Fineux*, *Vide* 21 *H.* 7. 35.*b.*

In 21 *H.*7.31. It is ſaid, that many VVrits of Error were ſued here in the Kings Bench, of Iudgements had and given in *Callis*, although it was ſaid by *Butler*, that their proceedings there were by the Civil Law. But ſee after 21 *H.*7.33. *Pl.*32. by *Brudnel*. If erroneous Iudgment be given in a County Palatine, it ſhall be reformed by VVrit of Error, or falſe Iudgement here. But if a Iudgement be given in *Wales*, or in *Callis*, it cannot be reverſed here, becauſe thoſe were never parcel of the Crown, but County Palatines were parcel of the Crown, and afterwards were exempted, 21 *H* 7.33.*b.*

A VVrit of Error lyeth upon a Iudgement given in *Ireland* in the Kings Bench in *England*, 2 *R.*3.14. in the Merchants of *Waterfords* Caſe, *N.B.* 22. *d.acc.*

A VVrit of Error was brought in the common Pleas upon a judgement given before the Iuſtices of Aſſiſe in the County of Monmouth, the Defendant did demurr to the Iuriſdiction of the Court to hold Plea of Error upon a Iudgement in Aſſiſe *Coram Juſticiar. per literas patentes.* And by all the Iuſtices, the Writ of Error did not lye, 8 *Eliz. Dyer* 250.

If Erroneous Iudgement be given in the Courts before the Sheriffs in *London*, the Writ of Error muſt be directed out of the Chancery to the Major and to the Sheriffs (although the Iudgement be given in the Sheriffs Court to remove the Record into the *Huſtings* of *London*, which is a Court holden before the Major) and there the Record ſhall be examined, and if there be Error in it, they ſhall reverſe the Record by the Cuſtome of the City, F.N.B. 22. *H.*23.*b.* And when Error is ſued upon a judgement given before the Major in the *Huſtings*, it ſhall be at St *Martins le grand* in *London* by Commiſſion, and there the Mayor and Aldermen ſhall have day by 48. dayes to be adviſed of their Record, and then the Recorder ſhall record it *ore tenus*, 34 *H.*6.42.

If a man be outlawed in Debt, or other perſonal Action, and brings a VVrit of Error, by which the Record is removed, and then he purchaſeth his pardon, and hath a *Scire facias*, the Plaintiff may declare

upon the old Original in the Kings Bench, notwithſtanding that the Statute of 5 *E.*3. be, that he that is outlawed before appearance render himſelf to priſon in that Court where the Exigent was awarded, and there declare upon the Original, *Vi.* 1 *H.*7.12. and 19. *acc.*

The Statute of 3 *H.*7. which erects the Court of *Starchamber* provides that the Lord Chauncellor, Treaſuror, Privy ſeal, or any two of them, calling to them one Temporal Lord, and one Spiritual Lord of the Privy Councel, and the two chief Juſtices, ſhall examine Ryots, *&c.* and that none ſhall be Iudges but the Chauncellour, Treaſuror, Privy Seal, or 2. of them, and the other but Aſſiſtants, and not Iudges. If in ſuch Caſe, the Chauncellour and Treaſerour do not call the others, and do by their adviſe, the ſame is Error, 8 *H.*7.13. *Plo.Com.*393. *acc.*

Note. The form of the VVrit of Error directed to the Juſtices of the Common Pleas is thus, *viz. Joh. Priſoit Capital. Juſticiar. & ſociis ſuis*, and not Capital Iuſtices only, for the Records are not before him alone: in the Exchequer, the VVrit is not *Theſaurario & Baronibus*, but *Baronibus tantum*, for the Records are there before the Barons only, 28 *H.*6.11. And when a Record is removed out of the Exchequer into the Exchequer Chamber by Error, when Iudgement is given all ſhall be remaunded, and Execution ſhall be awarded in the Exchequer, but it is otherwiſe of other Courts, 15 *E.*4.17.

Where a man ſhall not take advantage of his own default by Error and e contra; *And where one who is not party to the Writ, ſhall have Error, or take advantage, or Error.*

IN 18 *E.*4.19 It is holden by *Pigot* & *Choch*, That if Ioyntenancy, ſeveral Tenancy, *Miſnoſmer*, taking of Husband pendant the VVrit or the like which prove the VVrit abateable, if the party plead other matter he ſhall not have a VVrit of Error; contrarie it is of death, or other thing which proves the VVrit is abated.

If in Action brought the Defendant doth appear, and hath matter to Plead, he ought to plead it, and ſhall not be admitted afterwards to aſſigne the ſame matter for error, as that there be 2. dates, with addition, *Vide* 21 *E.*3. *Error* 4.7 H 6.39 *acc.*

In a Writ of Conſpiracie brought by *A.* againſt *J. M.* and others, the Plaintiff declared that the ſaid *J. M.* did procure the ſaid *A* to be appealed of Robbery done at *W.* for which he was impriſoned until he was acquitted, *J. M* appeared and pleaded Not guilty, which was found againſt him, and the Plaintiff had Judgement and recorded damages, *J M.* brought a Writ of Error, and aſſigned 2. Errors againſt the Judgement, 1. That the Iudgement was given againſt him before any other of the Defendants were attaint, and he could not conſpire alone. 2. That after Iudgement

was

was given againſt him, that there was no Proceſs againſt the others. And the Record being viewed by the Iuſtices, was that the ſaid *J. M. cum aliis conſpirationē prehabita procuravit*, the ſaid *A* to be appealed, and therefore it was holden that the Procurant being by him, and he having pleaded to iſſue, he ſhould not take advantage of his own default, who might have demurred upon the Evidence, and although it was Error in regard conſpiracy cannot be by one, yet he ſhall not have advantage of it, *Vide acc.* 24 *E.* 3. 35, 36.

An Action of Treſpaſs was brought againſt the Husband and Wife, and two others, the Husband at the *Exigent* appears, and the VVife, and the two others were waives. The two brought a VVrit of Error becauſe the *Exigent* was awarded after the ſecond *Capias*, and before the *pluries* returned, and for that cauſe the outlawry was reverſed, and it was adjudged, that the wife in that caſe ſhould have advantage thereof, although ſhe was not a party to the VVrit of Error brought, 8 *R* 2. ſee *Outlawrie* 17. *acc.*

The Cuſtodie of the Caſtle of *Cheſter* was granted unto *A.* and *B.* and the Survivor of them, *A.* dyed, and a *Scire facias* was brought againſt *B.* to repeal the Grant, and Iudgement was given that the Grant by Letters Pattent ſhould be cancelled. *B.* brought a VVrit of Error in the Kings Bench, and although that it was objected, that a Petition ought to have bin ſued to the Queen, to have a VVrit of Error, according to the Book of 23 *E.* 3. 24. yet in regard *B.* claimed but a Freehold, and his life might end before he could obteyn leave to bring Error, that there the VVrit was granted, and that he might aſſigne Errors to reverſe the Iudgment, without any Petition ſued to the Queen, *H.* 29 *Eliz.* in *B. R. Hualtſtones* Caſe. *C.* 3. *Part Inſtit.* 214. *b.*

In 40 *E* 3. 15. In an Action brought there the Tenant tooke day *prece partiū* without any Eſſoin, and at the day he was eſſoined, aad Judgement being afterwards given againſt the Tenant, he brought a Writ of Error, and for Error alleadged: that there was no eſſoin entred upon Record, in that caſe although it was ſaid, he might have taken advantage thereof at the time by way of Challenge; yet the Writ was awarded good. But *Quere* of that caſe, for the Reporter doubted of the Caſe, for that his Report did varie from other Copies; but that caſe ſeems to be reſolved, by Mr. *Fizherbert* in his *N. B.* 21. otherwiſe; becauſe it was a matter which was for his advantage, and *C.* 5. *Part* in *Teys* Caſe voucheth the ſame Iuſtice, and ſaith, That a man ſhall never reverſe a Judgement for Error, if he cannot ſhew that the Error be in his diſavantage, *Vide* 7 *E.* 3. 25. *F. N. B.* 21. *acc.*

In 8 *H.* 5. 2. *b.* A man brought a Writ of Error, and aſſigned for Error, that in a Writ of Diſceit brought, he himſelf prayed day, and day was given him, *viz.* a longer day, then the Common day, there the opinion of *Hankford* and the whole Court was, that it did not lie in the Party to aſſigne the ſame for Error, becauſe it was for the ſaid Parties own advantage

vantage; as in Caſe if a man will aſſigne for Error, that in a *Scire facias* he himſelf was eſſoined, he ſhall not be received to aſſigne the ſame for Error to reverſe the former Judgment, *Vide F.N.B.21.acc.*

*C.*8. Part in *Beechers* Caſe: a *Retraxit* entred by the Plaintiff is a bar for ever, yet in ſome caſe although ſuch *Retraxit* be entred, yet the Plaintiff himſelf ſhall be admitted to a Writ of Error, if Judgement be entred that the Plaintiff *fatetur ſe ulterius nolle proſequi defendentem de placito Predict.* and therefore the principal caſe there was, that *A.* brought a Writ of *Duo minus* in the *Exchequer* againſt *B.* and it was found for the Plaintiff, and for want of a good *Viſne* Judgement was ſtayed, and afterwards *A.* entred a *Retraxit*, *viz.* Confeſſed *ſe ulterius nolle proſequi*, whereupon Judgement was given, that the Defendant *eat ſine die*, but the Plaintiff was not amerced as he ought to have bin. Afterwards *A.* brought a Writ of error, in that caſe it was reſolved, that the Plaintiff ought to have bin amerced, for that a *Retraxit* was a voluntary acknowledgement that he had no cauſe of Action, and was a perpetual barr, and becauſe he was not amerced, that it was Error, and although (as it was there ſaid, that a man ſhall not take advantage, nor aſſigne that for Error which is for his advantage, (as his not amercing was,) yet becauſe the principal Judgement was not perfect, for that the Amercement ought to have part of the Judgement, and the ſame was for the advantage of the King, for that cauſe the Writ of Error did lye, and the Iudgement was reverſed, but upon a *Retraxit* otherwiſe entred, though there was Error in the proceedings, yet the ſame ſhall be a perpetual barr, and the Plaintiff ſhall not have a Writ of Error, and ſo was it adjudged, *Paſc.* 17. *Caroli* in the Kings Bench, in *Paines* Caſe, for a *Retraxit* is as ſtrong as a Releaſe, and Error ſhall not lye after a Releaſe of Errors.

EXE-

EXECUTION.

I. *How Execution ſhall be in a Recovery in a Court Baron, Ancient Demeſne, Court of Admiralty, or other Court Speciall.*

UPON a Recovery in a Court Baron, they of the Court have not power to do Execution of the goods of the Defendant, but they may diſtrain and keep the goods in ſafe Cuſtody till the Plaintiff be ſatisfied, 4 *H.*6.17. *Execution* 1. 2. *H.*4.27.

See 38 E 3.3. *It is admitted that upon a recovery of* 38. *in a Court Baron, that the Bayly may do execu-* vi. 1 E.4.10.

tion and deliver the Defendants goods to the Plaintiff there,

But where in Ancient Demeſne, the Plaintiff doth recover in an Aſſiſe, and doth diſtrain for the damages, he may ſell the diſtreſſe and deliver the mony to the Plaintiff, 7 *H.*4. 27. *Execution* 114. *Gage Deliverance* 2.

Vi. 4 H.6. 17. per Curiam, *That the Court hath not authority to deliver the goods to the* ſaid, that the Quære.

party in execution, but he may diſtrain them untill the party be ſatisfied. And note, it is there ſaid that the Uſage is to award a Levari facias, *but whether that be by cuſtome or by the Common Law,*

In a Leet they may preſcribe to ſell the diſtreſſe for Execution, and ſo in a Franchiſe which hath conuſans of Pleas, 22 *Aſſ.*61.

Note, 8 Car. in B.R. *It was adjudged in* Dobſons *caſe, that a ſale of goods taking in execution upon a judgment in a Court Baron was not good without a ſpeciall cuſtome.*

The Statute reſtraines the Court of Admiralty to hold plea of a thing done within the body of the County, yet they may award Execution of the body, or of the goods of a man which are found upon the Land, upon a recovery in their Court, *M.*19 *H.*6.7. *Barr* 110.

M.10 Jac. *in* Co.B. *adjudged accordingly in* Greeneway & Barkers *caſe.*

And upon a judgment in that Court, they may ſue forth an execution of it into forrein parts, as into France &c.

Land is recovered in Ancient Demeſne, the Tenant bringeth falſe judgment in Bank, and doth not purſue his Action, ſo as the other is ouſted of his Execution in Ancient Demeſne, and it was holden that hee might ſue forth Execution in the Common Bench, as in caſe where a Writ of Error is ſued in the Kings Bench and is not purſued, *vi. Title Execution* 27.

Debt lyeth in the Common Pleas upon a Recovery before the Mayor of the Staple, 9 *H.*6. *Execution* 6.

II. *How*

II. *How Execution ſhall be againſt Executors or for Executors.*

Vi.C. 5. part in Ruſſells caſe at. 9 H 7. 15. 7 E. 4. 8. 33 H.6 23 46. E. 3. 9. 2 Eliz. Dyer 185. acc. ſo for a falſe plea.

EXecution for the principall ſhall be of the Goods of the dead, upon fully adminiſtred found againſt them, and for the Damages of their own goods, 11 *H.* 4. 5.

Upon *Devaſtavit* returned at the *Fieri facias*, a ſpeciall Writ was awarded to have Execution of the goods of the dead, *if &c.* and if not, of their own goods, 11 H. 4 70. 9 H 6. 9. 2 H. 4. 4.

The Executor of an Executor, ſhall ſue Execution of a Statute made to the firſt Teſtator, and ſhall have debt at the Common Law, but an Account is given to the Executor by the Statute, *M.* 13 *Edw.* 3. *Executors* 92.

III. *When Execution ſhall be awarded although Error, or Attaint be brought.*

ATtaint was brought upon a verdict in Treſpaſſe before Juſtices of *Oyer and Terminer*, and becauſe it appeared upon Record that he had not payd his fine to the King, he was committed to the Fleet untill *&c.* yet the Attaint is to defeat the Verdict 16 *Aſſ.* 2.

And upon an Attaint a man ſhall not have a *Superſedeas*, to ſurceaſe the Execution, for the verdict ſhall be intended to be true untill the contrary be proved, and ſo no *Superſedeas* ſhall be upon Certificate of an Aſſiſe, *P.* 5 H. 7. 22. *Superſedeas* 6.

17 Car. in B. R. it was holden in Dale and Worthies caſe, that if the writ of error bare Teſte, before the plaint entred, the Record cannot be removed thereby, but vi. 1 E. 5. 4. A writ of Error bearing date before judgment is good.

If one bring a Writ of Error, *Menſe Mich.* and afterwards brings another Writ of Error, 15 *Martini*, and the other party ſhew the ſame to the Court, he ſhall have Execution, for ſo he might be infinitely delayed, but the Plaintiff in the Error may by that ſecond Writ, remove the Record into the Kings Bench, and from thence to have a *Superſedeas* to the Sheriff to ſurceaſe Execution, 19 H. 6. 8: So where the Plaintiff in Error doth not appear at the *Scire facias*, and the other hath Execution, yet in a new Writ of Error, he ſhall have a *Superſedeas*, 2 H. 7. 12.

Scire facias upon a Fine, the Writ was returned, ſerved, and the Demandant prayed Execution, and the Tenant ſhewed a Writ of Error, and it was holden, that the Juſtices ſhould not proceed to Execution, and whereas Execution was awarded, a *Superſedeas* iſſued to the Sheriff, but if a *Capias ad ſatisfaciendum* be, and ſerved, no *Superſedeas* ſhall iſſue forth, becauſe it is executed, but if a Writ of Execution be awarded, and the Record is removed by Error, the Defendant in the Kings Bench, ſhall find Suerty and ſhall have a *Superſedeas* from thence: So in the Common Pleas before Execution done, if Error come, and there it is agreed, that if the Record be removed by

by a Writ of Error before Execution awarded, they ſhall not award Execution after, becauſe their hands are cloſed, and they have not the Record before them, 20 H 6 4. *Execution* 5. 2 H 7. 12.

If one bring a Writ of Error, and doth not ſue to remove the Record, the other ſhall have Execution, and although that after he bring another writ of Error, yet Execution ſhall be awarded for the delay that he did not ſue at firſt with effect, 19 H 6. 8. 13 *E.* 4 4. And ſo upon *Non*-ſuit in the firſt Error, or if it be abated for any default of the party which ſued it, the ſecond Writ ſhall ſerve to remove the Record, but is no *Superſedeas* of the Execution, as it is where the firſt Writ abates by death, or not coming of the Juſtices, 6 *H* 7. 16. 3 *H.* 7. 22. 2 *H.* 7. 12. 19 *E.* 4 6. 10 *H.* 6. 6. 33 *H* 6. 21.

If one recover in an annuity, and hath a *Scire facias* for the Arrearages, Error brought for error in the firſt Record of annuity, is a *Superſedeas* to the execution of the arrearages due upon the Recoverie in the annuity, but not for the arrearages after the *Scire facias*, for that is a new Originall, *Quære* 13 *E.* 4. 4. *Execution* 15.

But note, if Damages be given in action, the bringing of a Writ of Error is a ſuperſedeas to the writ of Enquiry of damages, as it was adjudged 12 Jac. in B. R. Fink and Pains Caſe.

If one Recover in Annuity, and the Record is removed by error, yet the Plaintiff may have Debt upon the ſame Record, or Debt for the penalty, for non-payment *&c.* and the error is no *Superſedeas*, becauſe theſe are Originalls. So if one recover damages in a reall action, and the Record is removed, he may bring Debt for the Damages, becauſe it is a new Originall. So a man ſhall have Conſpiracy, Maintenance or Rediſſeiſin after the Record removed by error, becauſe they are Originalls, but he ſhall not have a *Scire facias* after the Record is removed, becauſe the ſame is a Writ of execution, 4 *H.* 6. 34. *Debt* 25. 10 *H.* 6. 6. 18 *E.* 46.

Upon *Devaſtaverunt* returned againſt executors a ſpeciall *Scire facias* was awarded of their goods, and after the Record was removed for error, yet it was holden, that the Juſtices upon this *Scire facias* might award execution, but not before the Record removed, *H.* 10 H 6. 6. and upon *Nihil* returned at the *Fieri facias* againſt them, the Plaintiff may award that they had Aſſets at the day of the firſt Originall, and execution ſhall be awarded of their own goods, although the Record be removed by error 17 *E.* 3. 45. *Executor* 76.

The King brought a *Scire facias* upon a Recovery in a *Quare impedit* againſt the Biſhop, who ſhewed that he had removed the Record by error and notwithſtanding that, the King had execution, for it was holden that he is in poſſeſſion preſently by the Judgement, *M.* 22 *E.* 3. 29. *Scire facias* 114.

IV. *Where Execution ſhall be of a Statute Merchant or Staple, or where one of the Conuſees, or a ſtranger in their names ſhall have Execution, and where with Coſts and damages, and how the Certificate ſhall be.*

Debenham was bound in a Statute Staple to *Duplege*, and the ſame certified into the Chancery at three ſeverall dayes, the laſt day in the time of *Hen.6.* who was preſently after depoſed (but that was no prejudice to the Certificate, or to the execution ſued) and he had execution upon the laſt Certificate alone, in the time of *Hen.6.* and granted the Land unto *T.* ſo that *Duplege* took no profits untill the wife of the Debtor whoſe Land it was, dyed, for which cauſe he prayed a *Capias* againſt *Debenham*, after the time that the extent paſt, and becauſe he did not ſhew the ſpeciall matter, how that he was not ſatisfied, he could not have the *Capias*, but with the ſpecial matter he ſhould have it, & now after the time that the execution is paſt, the Defendant ſhall have a *Scire facias* without ſuggeſtion *&c.* not ſo within the Term without alledging ſpeciall ſatisfaction, as by ſuch caſuall profit, or by the Money tendred and refuſed, and where upon ſuch ſuggeſtion a *Capias* is granted, the Defendant may come into the Chancery, and traverſe the ſuggeſtion, and put in ſureties, and have a *Scire facias* againſt the Conuſee, and ſhall go quit, if the other cannot prove his ſuggeſtion, and afterwards he was taken by *Capias* upon the firſt Certificate, and it was holden that the three Certificates ſhall be intended ſeverall Statutes, and that the Defendant ſhould not aver that there was but one Statute. So upon a Record three times certified upon error ſued, 2 R. 3.7. *Execution* 16. *vide Fitz N.B.* 130. that upon a ſpeciall *affidavit* that execution is not done, a Statute may be twice certified, and where one Certificate was in the Common Pleas, and the other in the Kings Bench, and he had *audita querela* in the Common Pleas, and was taken afterwards in the Kings Bench, and was not bailed there, becauſe it ſhall be intended ſeverall Statutes, 29 *Aſſ. pl.*29.

Certificate of a Statute Merchant was ſued forth, and execution ſued in the ſame County, the Sheriff returned *Non eſt inventus*, for which the Plaintiff ſued another Certificate to the Major, by reaſon of which the party was taken, and it was holden that the ſecond Certificate was not grantable, yet the party taken would not be ſet at liberty by 28 *E.*3.91. *Execution* 93.

Where there are ſeverall Certificates in divers Courts upon one Statute, execution ſued in the one ſhall not ſtay that in the other, becauſe they are intended ſeverall Statutes, but it ſeems he may ſue to the Mayor to certifie if there be another Statute or not, and ſo be helped, 29 *Aſſ.*29. and becauſe where a Certificate is ſued in the Common Pleas, and the ſame Plaintiff ſues another Certificate in the Kings Bench, and the Iuſtices,

ces were certified by the Mayor, that all was but one Statute, the parties cauſed the Record to come out of the Common Pleas into the Kings Bench, and then a *Capias* ſhall iſſue from thence againſt the Conuſor, and yet one Conuſor was taken before in the Common Pleas, but it appeared that he afterwards eſcaped, 29 *Aſſ.* 41.

A Statute which was certified for the Teſtator ſhall by a ſpeciall writ be certified for the Executor, *Fitz. N. B.* 132. ſo where it is not ſufficiently certified before, ſo where the party doth keep it in his hands, ſo where the firſt Certificate is loſt, and if the Major will not certifie it, a *Certiorari* ſhall be directed unto him, *F. N B.* 244.

The Major of the Staple hath power to hold Plea of thing done in the Staple, & upon a Statute acknowledged before him, Execution may be ſued, or in the Chancery at the pleaſure of the party, 9 *H.* 6. *Juriſdiction* 6.

It was ſaid, that Execution of a Statute Staple or Merchant ſhall not be ſued in the Chancery without ſhewing of the Statute, & then the ſame ſhall remain in the Chancery, where it ſhall be cancelled, for the party ſhall never have Execution thereupon again, 2 *R.* 3. 7. but where a Statute is twice certified, and he ſueth Execution upon the firſt Certificate, and the ſame is avoided by an eygne title, and the Statute is not cancelled, and he ſueth a *Capias* upon the other Certificate (as he may) if the ſame be now cancelled he ſhall be puniſhed in Treſpaſſe, which is not reaſon, 2 *R.* 3. 7. *Execution* 16.

Upon a Statute Merchant a *Capias* iſſued out of the Chancery, returnable in the Common Pleas, The Sheriff did return *Non eſt inventus*, now *Capias* and *Extendi facias* ſhall not iſſue out of the Common Pleas, without ſhewing the Statute to the Juſtices, although he had ſhewed the ſame in the Chancery before, and if the Sheriff hath reurned *Cepi corpus*, and hath the body here, if he do not ſhew the Statute, the party ſhall go quit, although it be loſt, but upon a Statute Staple he muſt ſhew the ſame upon the *Capias* awarded, but not afterwards, becauſe in the ſame place, 37 *H.* 6. 6. and 7.

It was holden, that if a Statute becertified, the Plaintiff ſhall have execution without ſhewing of it, but if he doth not ſhew it at the day of the return, the other ſhall be at large, although he hath Execution of the body of one or of all the Defendants, 26 *H.* 6. *Execution* 6. See the Statute of 5 *H.* 4. *cap.* 12.

Vavaſor ſaid, that he ſaw where the Recogniſee died, and a ſtranger came in his own name, and ſhewed the Statute and had Execution, although the other came not in proper perſon, and upon a Statute made to two, if one come with it he ſhall have Execution in both their names, and it is a common courſe that every ſtranger who comes with the Statute ſhall have Execution upon it in the name of the Recogniſee, 12 *E.* 4, 10. and 11 *Execution* 14. *Vide* 9 *E.* 4. 15, 16 *H.* 6. 13. 14 *H.* 7. 6 11 *E.* 4. 1. 29 *H.* 8. 29. *acc.*

And upon *Non eſt inventus* returned upon the Certificate where the Plaintiff died his Executor ſhewed the Statute, and had Execution upon

on it, 17 *E.*3.31. But ſee 18 *E.*3.10. he ſhall not have it without a *Scire facias*. *Vide Eliz. Dyer*, Conuſee of a Statute Merchant had it certified in the Chancery. and thereupon had a *Capias* upon it and died, upon the ſhewing of the Statute, his Executor had a *Scire facias*.

The Recogniſee ſhall have Execution, although he hath releaſed his Right in the Land, and although he hath purchaſed parcell of it, 45 *E.*3.2.

If Proceſſe be awarded to arreſt the body, and the Sheriff doth nothing, the party ſhall come and plead an acquittance without an *Andita querela*, otherwiſe it is of a defeaſance, but he ſhall plead the deſeaſance, 17 *E* 3.3. but if he be taken he ſhall not plead an acquittance, but ſhall be put to *Audita querela* 45 *E.*3.24 and a man ſhall have an *audita querela* before the Extent returned, and thereupon ſhall have a *Venire facias*, or a *Superſedeas*, 17 *E.* 3.3. *Execution* 51.

The Sheriff returned the party dead, for which cauſe he had Execution of his Lands, 15 *E* 3. *Execution* 59.

Upon *Non eſt inventus* returned, it is no Plea, that there is no Certificate in the Chancery without a Writ to teſtifie the ſame, 15 *E.*3. *Execution* 61.

When the Sheriff returneth *Clericus beneficiatus* upon a Statute, it is holden that the plaintiff ſhall not have a Writ to the Biſhop *de bonis Eccleſiæ*, becauſe it is not given by the Statute, but he ſhall have a Writ of his Lands, 19 *E* 3. *Execution* 79. See 8 E.3.36. But ſee a *Scire facias* of an Annuity for the King was awarded *de bonis ſpiritualibus*, 8 *H.* 5. 5.

And note that upon return of the death of the Conuſor, that upon a Writ to the Sheriff to make delivery upon ſuch return, that he return that a ſtranger is in by a later recovery, the ſtranger ſhall not be put out without his anſwer, 9 E.3. *execution* 197. but it was holden that a *puiſne* Feoffee ſhall be put out without a *Scire facias*, but there is no mention made of the Return of the Sheriff, 2 E.2. *execution* 118. *vide* 17 E.3. *execution* 53.

The Conuſor ſhall not have a *Scire facias* to have back his land upon an acquittauce or the term ended, if he do not tender the coſts and charges of the party, and the ſufficiency of the coſts ſhall be tried by the Countrey, 47 E 3 11. See 46. *Aſſ. Scire facias* 134. and 15 *H.* 7.15. but upon an *Elegit* the plaintiff ſhall have the bare extent without his coſts, 31 *E* 3. *extent* 13.

When a Statute Staple is certified into the Chancery, *Capias* ſhall iſſue forth returnable there, and alſo proceſſe to ſeiſe the Lands into the Kings hands to anſwer, at which day he ſhall have Liverie out of the Kings hands without any more, and the Writ is returnable in the Chancery, but when upon a Statute Merchant a *Capias* doth iſſue out of the Chancery, returnable in the Common Pleas as it may, Execution ſhall not be of Lands and goods untill the *Capias* be ſerved, or *Non eſt inventus* returned here, and then he ſhall have it returned in as many Counties as he will

will, and upon *Non eſt inventus* returned here, an *Alias Capias* ſhall iſſue, 37 *H.*6.7.15 *H.*7.14. See the Statute of 27 *E.*3. *Cap.*9.

See, that upon a Statute ſtaple by the Statute of 27 *E.*3. *Cap.*9. The Major of the Staple ſhall keep his body in priſon, if he be found within the Staple until the Party be ſatisfied of his debt and damages, but if it be out of his Iuriſdiction, it ſhall be certified into the Chancery under the ſeal of the Major, upon which a Writ ſhall iſſue forth to take the Body Lands and goods, and upon that Execution ſhall be as a Statute Marchant, and that is with Coſts and Damages, and *Fairfax* conceived, that this is the courſe to have the coſts at the end of the Term, that where the Defendant hath a *Scire facias* in Chancery to have back his Land, the Conuſee ſhal ſay that he had not levyed his coſts and damages and then what coſts and damages ſhall be allowed him ſhall be adjudged by the Chancellor according to his diſcretion, becauſe the debt and time appeareth *ad quod non fuit reſponſum*, 15 *H.*7.16.

And it was then holden, that upon a ſtatute ſtaple Execution ſhould be awarded of the whole at the firſt, but upon a ſtatute Marchant, he ſhal have a *Capias*, and upon a *Cepi* returned, he ſhall remain in priſon a quarter of a year to ſell his Land, but upon *Non eſt inventus* returned Execution ſhall be of his goods and Lands, *&c.* and at a Statute Marchant is the ſeal of the King and of the Party, ſo as ſome conceive debt lyeth thereupon. *Quare.* But the ſtatute ſtaple hath not the Kings ſeal (but being grounded upon the new Statute *Anno* 32 *H.*8. *Cap.*6. it hath alſo the ſeal of the Party) and it was holden that Executors may ſue Execution of a ſtatute-ſtaple, or Merchant without a *Scire facias*, which he cannot do upon a Record at the Common Law, 15 *H.*7.15. and 16. And the new ſtatute ſtaple ſhall be acknowledged before one chief Iuſtice or the other, or before the Major of the ſtaple of *Weſtminſter*, and the Recorder of *London.*

V. *Where Execution upon a Recogniſance ſhall bee, and how, and in what manner againſt the Party, or againſt the Feoffees.*

A Recogniſance of Peace, and to appear at ſuch a day in Bank, and at the day his appearance is not recorded, and if he be bounden to appear at any Defendants ſuit, the other ſhall ſerve him without more, otherwiſe it is there, yet there Execution was not awarded but by *Scire facias*, yet it appeared that the Recogniſance were forfeited, 38 *H.*6. 10.39 *H.*6. *Execution* 10.

A *Scire facias* upon a Recogniſance, and death returned, for which a *Scire facias* was awarded againſt the heir and ter-Tenants, who being returned, warned, did not appear, and there upon the Plaintiff had an *Elegit.*

*T.*38.

T. 38 E. 3. *Execution* 30. and upon 2. Attaints of Rediſſeiſin one being returned dead, Execution ſhall be againſt the heir, and the ter-Tenant together, 19 *E.* 3. *Execution* 81.

Vi. 45. E. 3. 18. *acc.*

After the day encurred, the conuſee had *Elegit*, and a Writ of Extent to deliver, *&c.* until 100 l. levyed, whereas the Recogniſance was but 100. marks and the Roll 100. marks, for which cauſe the Writ was amended, and the Extent ſtood until he had levyed 100. marks, and then reſtitution, but all was entred into the Roll, 44 E. 3. 12. So where damages were taxed to 100. l. and entred 100 ſhil. the ſame was amended 45 *E.* 3. 19. ſo where the *Niſi prius* doth varie from the ſum demanded, 20 *H* 6. 16. and and 17.

Quære if in this caſe the Sheriff had levyed the whole 100. l. of the goods of the Conuſor what remedy he hath for the ſurpluſage.

A *Scire facias* againſt the Feoffee of the Recogniſor who ſaid that there was an other Feoffee of other Party not named, *&c.* for which a Writ was awarded to warn him to ſhew cauſe why his Lands ſhould alſo be extended *H* 41 E. 3. *Execution* 37. See 45 E. 3. 17. where the Feoffee ſhall have *Audita querela* againſt the Conuſee & the other Feoffee, and a *Venire facias* againſt both, and the other Feoffee only. and a *Venire facias* againſt both, and the other Feoffee pleaded an Acquittance, *&c.* and upon execution ſued againſt the Feoffee where the Recogniſor alſo hath Lands, he ſhal have a *Scire facias* againſt him to anſwer for his portion, 47 *E.* 3. 4.

9 H. 4. 4. 23 E. 3. *Execution* 117. 15 Eliz. *Dyer*, 332. 1. *and* 2 Eliz. *Dyer* 193. c. 3. *Part. Herberts caſe* 33 E. 3. *Audita querela* 83. 16. *H.* 7. 6. *acc.*

And note, that the Writ ſhall not abate becauſe all the Feoffees are not named, yet none ſhall anſwer until they all appear, *M.* 11 E. 3. *Execution* 266.

Upon the Recogniſor returned dead, and a *Scire facias* againſt the ter-Tenant, it is no Plea that the Recogniſor hath an heir, but it is a good return that the heir hath Part of the Land, *ibid.*

Execution ſued againſt the Ter tenant was challenged becauſe not firſt ſued againſt the heir: *Treſilian*, you ought to ſuppoſe that he hath an heir, and that he hath Aſſets, but the heir is bound no more then the Feoffee, becauſe he is not named the Recogniſance, therefore anſwer: Alſo he need not firſt ſue againſt the Executors, *T.* 7 *R.* 2 *Execution* 46. But Proceſs ſhall not be awarded againſt the ter-Tenant until the debtor, or his heir be warned, but the heir and the Tenant may be warned by one *Scire facias* or firſt the heir, and upon *Nihil* returned, then the ter-Tenants, *T.* 17 E. 3. *Execution* 139. but ſee 46 *E.* 3. *Breef* 605 A *Scire facias* againſt the heir, executors and ter-Tenants, and all warned, although the heir nor executors had not any thing.

C. 3 Harlots *caſe, &c.*

The Recogniſee by the firſt Writ ſhall not have execution but of the Land which the Recogniſor had at the time of the Recogniſance, and upon Return that he had no Land, then he ſhall have a VVrit to trye who had at the time, *&c.* or after, *&c.* 36 *E* 3. *Execution* 47. 19 *E.* 3. 1. See where he had all at the firſt Writ by *Elegit T.* 23 E 3. *Execut.* 69. *Vide Stat. Weſt.* 46.

Where two ſued execution, the monies was delivered to one, and to the atturney to the other, *M* 14 E. 3. *Execution* 76. and the Defendant in.

Court

Court did pay the money to one, the other being abſent, and it was good, and the Recogniſance was withdrawn, *M.*22. *E.*3.15.*execution* 87.

A *Scire facias* upon a Recognisance doth not ly, if againſt the Tenant of the Freehold, not againſt the Guardian alone, and the heir ſhall have his age, See 12 E.3.*execution* 77.he ſued againſt the other ter-Tenants,and the heir within age, a writ brought againſt the Leſſee for years alone was abated, *H.*20 E.3.*Scire facias* 121.

Execution ſued againſt two, one was returned dead, and that the other had nothing, the Plaintiff prayed a *Scire facias* againſt the heir of him that was dead, and the Ter-tenant, and ſurmiſed that the other had Aſſets elſewhere, and becauſe he would not ſue execution upon the *nihil* returned he had a *Scire facias*, P.13 *E.*3. *execution* 78. and if the Plaintiff doth know that the one hath not any thing, he ſhall have a *Scire facias* againſt the heir of the other for the whole,yet no recogniſance doth bind every one in the whole,*M.*5 E.3.*execution* 100.but by the Statute he may have a *Scire facias* in the other County,and then execution againſt the firſt ſhall ceaſe, untill the other appears, *H.*12 E.3.9.*execution* 141.

Vide 15 *Car. in B.R. the caſe was Hopton acknowledged a Statute to Dawes, and afterwards conveyed part of the Lands to the Leſſor, the Conuſor afterwards conveyeyed the other part of the land to Dawes the Conuſee. It was holden in that caſe, that by the purchaſe of part of the lands by Daws, that the Statute was extinct.*

It was ſaid, that a purchaſe of parcell of the Land did extinguiſh the Recogniſance, *M.*22 *E.*3.*execution* 88. and ſo of a Statute

If a man acknowledge a Debt without plea in *Banck*, *execution* ſhall not be awarded by *elegit* without proceſſe of Law, as an action of Debt, ſo the Statute of *Weſt.P.*2 E.2. *execution* 120.

A Recogniſance payeable at divers dayes, upon one day incurred, he had not Execution by *Elegit* of the moyety of his Land,and then the other day encurred,he now ſhall have Execution of the reſt during his poſſeſſion of the other moyety,*M.*10 E.2.*Execution* 137. *quod mirum.* And by the later *Elegit* he ought not to have the moyety of the reſt, and that alſo was doubted, and denyed by *Shard*, that by ſuch means he ſhould have 2. Executions, where he might hold the firſt *Land*, until the whole were levyed, *Quare*:yet *Elegit* was granted upon the firſt day broken, *M.*16 E.2. *Execution* 138.

A man recover his debt and damages, and before Execution dyeth, a *Scire facias* ſhall iſſue againſt the heir, and ter-Tenants of the Lands of the Defendant at the time of the Judgement, and upon that, the Party may have *Elegit* 4 *Eliz.Dyer* 208.7 *H.*4.22.*acc. Quare*, *Plow. Com.* if the Party hath not election to have execution againſt the heir, or executor. 439.a.10 *H.*7.3. by *Vavaſour.*

7 *E.*6.*Dyer* 81. 2. and 4. *Ma. Dyer* 149. 18 *Eliz.Dyer*,341.

The heir ſhall be charged in debt of the Lands which he had by diſcent, the day of the Writ brought, and not the day of Judgment, *M.*18 E.2. *Execution* 241.

C.3.*Part Harberts caſe*, the *Plaintiff ſhall not have* Elegit *but of ſuch Lands, as were diſcended to the heir. at the time of the Writ brought.*

One recovers Debt, and hath a *Scire facias*, now upon that Recovery he ſhall not have a *Fieri facias* of his goods but a *Scire facias*, *M.*18 E.2. *Execution* 143.

A *Scire facias* againſt the principal and ſureties the principal being warned

warneth appeareth; the ſureties not, it was thought fit that execution ſhould be againſt the ſureties for their Contempt 11 *H.*4.12. *Condemnation.*9

A Writ out of the Common pleas againſt ter-Tenants naming their Names, and another in another place to ſuch a one, what Land he had at the day of the Recogniſance and not generally of his Lands, for which it was abated, 46 E.3.29. *Brief* 605. But it was holden that he ſhall have a *Scire facias* againſt ter-Tenants and name them at his peril, and if they have but for years, he who hath the Freehold ſhall have an *Aſſiſe* 20 E.3. *Scire facias* 121.

A *Scire facias* againſt ter-Tenants, they ſay that one *R.* holdeth parcel not named *R.* being warned appeareth, ſaith that *A* holdeth another parcel not named, now Execution ſhall not be againſt the firſt Tenants, for they may hold to the Plea of *R.* if the Plaintiff wil reverſe it, and if he confeſſe it, all ſhall ſtay till *A* be warned, for Execution ſhall not be taken by parcell, and the firſt might plead other matter afterwards againſt the Execution, and a Writ ſued forth to warn *A.* and not him and all the ter-Tenants, nor all whom he will call Tenants, *Quære* this, And afterwards *A.* was returned *Nihil*, & then if *A.* appeareth by Atturney, he may plead how that he had not day, otherwiſe the other ſhall have Execution, *M* 11 *E* 3. *Execution* 266.

But ſee 2 E.3 *Scire facias*, 141. That where one was returned warned, and the other *Nihil*, and he who was not warned did not appear, yet Execution was not awarded but Proceſs by *Teſtatū* againſt the other into another County who made default, and the other would have pleaded an Acquitance by atturney, but could not, becauſe he had not day in Court, *Quære*, if he had appeared in proper perſon, *&c.*

The Sheriff returned an extent, but not that he had delivered it, *&c.* the Party had a *Scire facias* and *ſicut alias*, becauſe the Court was not ſatisfied, if he were ſatisfied, *M* 12 E.3. *Execution* 117.

A man condemned and outlawed brought a Writ of Error, and found bayl, and did not keep his day. *Mordant*, the Party is put to a *Scire facias* upon the Recogniſance againſt the bayl becauſe he is now out of Execution, becauſe he was once in Execution, and the Recogniſance is to the King, and not to the party for which cauſe it ſeems he ſhall have *Capias*, 8 *H* 7.9 See 16 *H* 7.21 E.4 80.

So it is agreed, that where a man is in Execution upon a Statute, and findes bayl, and doth not appear at the day, but at another day the bayl bring him in, now it is in the Election of the Plaintiff to take Execution of his Body and Land, or to take the bayl, See 59 E 3. *Execution* 43.

VI. *When*

VI. *When Execution ſhall be for one, or againſt one, and that for the whole, and when Execution ſhall be for Part.*

IF three recover damages in Aſſiſe, and before execution taken forth two of them dye, the third ſhall not have Execution, but of his portion: but if Execution had bin ſued for damages, and the Land delivered to three by *Elegit*, and afterwards two had dyed, the third ſhould hold the land until all the damages were levyed, otherwiſe is it of a Recogniſance or debt recovered *M* 13 *E*.3. *Execution* 75.

If two ſue Execution, and before extent one dyeth, yet the Sheriff ſhall extend the Land, and ſhall deliver the ſame to the other, 11. *R*.2. *Brief*. 938.

But if two ſue Execution of a Statute-Merchant, and the Cunuſor is returned dead, and then one of the Conuſees doth alleadge the death of his Companion, he ſhall not have Execution without ſuing a VVrit out of the Chaunccery upon his Caſe, 25 *E*.3.38. *Execution* 92.

A man recovered 40 l damages, and by *Fieri facias*, the Sheriff delivered him 10 l. becauſe the other had no more goods, who is now dead; it was now ſaid that if he hath Executors who hath Aſſets, Execution ſhall be ſued forth againſt them, but he ſhall have Execution againſt the heir at his peril of the reſidue *M*.19. *R*.2. *Execution* 263.

And it was holden that the heir ſhall not be charged but for his portion upon the Statute of the Aunceſtor if there be other Feoffees, ſo of the Gardian, when the Heire is under the Guardianſhip of many, *H*. 48. *E*.3. *Vouchee* 76.

The King not being well informed did licence his Tenant in Tail to alien, and to take back eſtate to him, and his Wife, who did ſo and dyed, the Wife held the Land, A *Scire facias* iſſued for the King, for the mean profits, becauſe the King was deceived, and for the 2. parts ſhe ſhall be charged but not for the third part, becauſe ſhe had cauſe to have Dower of the ſame, yet ſome were of opinion that ſhe ſhould anſwer the whole, becauſe ſhe was privy to the Wrong, *Vide* 40. *Aſſ*. 36. *Gard*. 1.

One levyed 10 l. by *Fieri facias* in the time of the Teſtator, and the reſidue by *Fieri facias* of the Executor; or by *Elegit* againſt the heir, but there he prayed the whole firſt, and it was no folly in him, 19 *E*.2. *Execution* 163.

Vi.19. *Aſſ*.37. *C*.3 *part in Sir William Herbe is caſe, 4 ſeiſed of land bind them in a Recog. the Coniſor cannot extend the land but of one of them all of them muſt be equally charge d.*

Execution ſued againſt all 6. Conuſors of a Statute, & upon the taking of one, he had a Writ to take the others, although that one was in Execution, 26 *H*.6. *Execution* 6. And where he ſhall ſue againſt all, or againſt one, See 4 *E*.4 41.5 *E*.4.5.44 *E*,3. *Execution* 36. And where one being in Execution Proceſs ſhall be againſt the others, See 34 *E*.3. *Execution* 129.

Scire facias upon Damages recovered againſt 2. one was returned warned, and that the other had nothing, the Demandant prayed Execution againſt them both at his Peril, and upon a Recovery in value againſt two, the Execution ſhall be againſt both, but here he that appeareth ſhall have *Idem dies* until the other be warned, or a *nihil* again returned, although that he who appeareth confeſſeth the Action, and if one caſt a Protection, no Execution ſhall be againſt the others, 1 *H* 5.4. *Execution* 22.

Vide 36 *H.* 6 4. *acc.*

Note there is a differencie betwixt doing Execution, and ſuing Execution, for if a man do recover againſt 3, and one is preſent at the bar, he ſhal be taken in Execution, but if they be all abſent, he ought to ſue forth Execution againſt them all in common, by *Strange* Juſtice.

A *Scire facias* upon a Recogniſance againſt two, the one is returned dead, and the other that he hath nothing, the Plaintiff at his prayer had a *Scire facias* againſt the heir and Ter-tenant of him who was dead, and by *Teſtatum* in another County againſt the other, or he may have Execution againſt the Survivor ſolelie, but he ſhall not have Execution againſt the heir, or Executor of him who is dead, without alſo ſuing Execution againſt the Survivor, 13 *E.* 3. *Execution* 78.

Scire facias after the year for Damages recovered againſt two in an Aſſiſe, the one was returned dead, and the other warned, and it was holden that he ſhould not have Execution againſt the Survivor without ſaying againſt the heir, and the Ter-tenant of the other, yet the Sheriff might levey the whole upon one. But *Thorp* was of opinion, that the Survivor who is party of the wrong might onlie be charged, but the opinion of the Court was contrarie. Alſo the Sheriff cannot levey the whole againſt the heir of the one, or the other Ter-tenant, for there *audita querela* lyeth if he be charged above his portion, 19 *E.* 3. *Execution* 81.

A *Scire facias* againſt two, one warned appeareth, the other maketh default, and the Plaintiff prayed Execution againſt him, and ſhould not have it, for then he cannot ſue him who appeareth, wherefore Execution did ſtay, *P.* 6 *E.* 3. 13. *Execution* 103.

Scire facias upon a Recoverie againſt 6. where 3. were returned warned, and 3. dead, It was holden that a *Scire facias* ſhould iſſue againſt the heires and Executors, and by reaſon of the nonage of one of the heirs, the procedings were ſtayed againſt the reſt, and no Execution againſt any of them, becauſe the other might have an Acquittance, 29 *E.* 3. 39. *Exec.* 136.

Vide 1 *H.* 5. 46. *acc.*

Vide C. 5. *Part.* in Blunfields *Caſe, and* 33 *H.* 6. 47, *contrarie he may take the body of both in execution, and the body of one is no full ſatisfaction but a pledge onely for the deb:.*

Maintenance againſt diverſe, one who was found guilty is in the Marſhal ſea, now the Plaintiff ſhal not have Execution againſt him without releaſing to the others, as in Treſpaſs. And it was ſaid that he ſhould not proſecute againſt the others without ſetting him at large, for otherwiſe he hath his Execution, which ſhal not be without releaſe to the others. And it is there ſaid, if three are condemned joyntly, and one of them be taken by a *Capias ad ſatisfaciendum*, the Plaintiff ſhall not ſue the others, 7 *H.* 4. 30. *Judgement* 66.

But where three are bound in a Statute jointy and ſeverally, the Plaintiff.

tiff ſhall have Execution againſt one, or all of them at his election, and not againſt two, and ſo of an Obligation. But if he bring debt againſt them all upon a Joynt Bond, the Execution ſhall be againſt all; but if he bring it by ſeveral *Præcipes*, he ſhall not have Execution but againſt one, 34 *E.*3. *Execution* 129. 14 H.4. 19. *Execution* 29.

Where three are attainted of Diſſeiſin, the King may take Execution for his fine againſt one only, but ſo cannot the Party, 15 *H.*5. 5. *Execution* 153.

VII. *Where Execution ſhall be upon a Recovery here againſt him, who hath not Land but in Liberties, County Palatines, or Auncient Demeſne.*

One was ſurety of *A.* for to keep the peace, who brake it, and the ſurety had nothing but in *Durham*, the King ſhall ſend to the Biſhop or his Chauncellor to do Execution, *M* 1 *E.*4. *Execution* 11. and that ſhall be upon return of the Sheriff that he hath nothing, and the Party did ſurmiſe that he had not any thing but within the County Palatine, and the Tenor of the Record which is certified ſhall be ſent thither, *F.N.B.* 132.

A man ſueth Execution of a Statute Staple, and the Defendant being returned *Nihil*, he doth alledge that he hath Land within the 4. parts, for which a Writ was awarded to the Conſtable there to do Execution. The Reporter thinks that he ought firſt to have a Writ to the Sheriff to deliver his Lands out of the Kings hands, and then a Writ to the Conſtable, *M.* 21 E.3. 49. *Execution* 70. *Br.* *Execution* 115.

At the *Capias* upon a Statute Merchant upon *Non eſt inventus* returned a Writ to ſeize his lands, and the Sheriff returned, that he had not any but in Auncient Demeſne which he held joyntlie, &c. the Plaintiff ſurmiſed that the Land was Frank-fee, and that he was ſole Tenant, and upon that had a Writ, *&c. P* 15 E.3. *Execution* 62.

Land in Auncient demeſne may be put in Execution upon a Statute Merchant becauſe the Party thereby recovers not Freehold, but Elegit *is at the common Law and Ancient demeſne is acquitted of execution by* 3. Elegit. *by the ſtatute of Weſt.*2 *Cap* 18. 2 E.2. *Execution*, 89. *acc.*

A man had Execution of a Statute Merchant of Lands in Ancient Demeſn againſt the Feoffee, and being put out he ſhall have an Aſſiſe at the Common Law by the opinion in *M.*2 *E.*2. *Execution* 118. But it was holden a good Return upon a Statute, that the Party had not any Land but in Ancient Demeſne, *P.* 15 *E.*3. Return of the Sheriff 109.

He who had recovered Damages in Treſpaſs, ſued forth an *Elegit* of Lands in Ancient Demeſne, and it was held, that he being put out, could not have an Aſſiſe, becauſe he ought not to have had Execution of thoſe Lands, for the Statute extends only to Lands at the Common Law, and ſhall not bind in Ancient Demeſne where the Recoverie is by Writ of Right Cloſe in the nature of any Action, *H.*8 *E.*2 *Execution* 136. See according to that 22 *Aſſ.* 45. *Ancient Demeſne.* 23. That the Sheriff ſhall not deliver Lands in Ancient Demeſne by *Elegit*, & if the Recogniſee dyeth, his Executors have not any remedy, for they ſhal not have a Writ of Right

Close in the nature of an Assise, so neither the Testator as I conceive: but upon a Statute Merchant Lands in Ancient Demesne were delivered in Execution, and held good, 7 H.7. 11. See 7 H.4. That Lands in Ancient Demesne are good Assets.

VIII. *When after Execution awarded a* Superſedeas *shall issue forth to cease, &c. And where execution shall be stayed against one until Judgement be given against the other.*

DEbt against three by several *Præcipes* upon an Obligation joynt & several, all plead, and its found for the Plaintif, he hath a *Capias* and *Extent* against one, who prayed a *Superſedeas*, or that the Plaintiff would relinquish the others, & a *Superſedeas* awarded *causa conſcientia*, because the Recovery was by default, *Quare*. It seemes the Plaintiff shall never have Execution against the others when he hath chosen Execution against one, but in Trespas where hee sueth for Execution against all the Defendants, and one onely is taken, yet Proces shall continue against the others, but that is not like the other case, 4 E.4.14. *Vide* 14 *H.*4.19. That he who recovers against two upon an Obligation by several *Præcipes* shall not have Execution but against one at his Peril.

A.B.C. & D. are sued by several Precipes upon their joynt and several obligation, A. & B. are condemned, *C.* doth demur, *D.* pleads to issue, and their pleas continue, the Plaintiff sueth Execution by *Capias* against *A. Pigot*, in Trespas no Execution shall be against one until the other be condemned, and here it appeareth by the information of the Preignothorie that all are sued upon one Obligation, and the entrie is general that Execution shal be, and in Debt upon all condemned and one taken, Proces shal issue forth against the others, *&c.* and a *Superſedeas* was awarded *causa conſcientia*, because he did recover by Default, 5 E.4.4.

38 *H.*6.13.12 *H.*4.8. *acc.*

Where in trespas some are found guilty, and the pleas of others depend in Proces, the Plaintiff may pray Iudgement against those who are taken, and Execution shall cease, &c. and then he may Release, or relinquish against the others, and have execution against the first, 5 E.4.5. 15 E.4.27. 36 *H.*6. *Fieri facias* 3.44 *E.*3.7. *Execution* 36. So it seems in debt by several Precipes, where all are condemned, and one is taken, 4 *E.*4.41.

Vide C. Part. in Plunfields *Case.*

So in debt by one Precipe, and parcel is found or confessed, and they are at issue upon the residue, he shall have Judgement, but Execution shall stay of the debt and damages, until, *&c.* but of Costs he hall not have Judgment untill, *&c.* 36 *H.*6.6.14. So upon severall Issue in Trespas or Demurrer for part, and the issue found 32 *H.*6.6. and 7. *M.* 14 *H.*7.7.

A Statute-Merchant was certified, and a *Capias* awarded, the Defendant came and purchased an *Audita querela*, and prayed a *venire facias* out of the

the Common Pleas, where it ought not to iſſue untill Execution returned, yet for the miſchief of the Party that he ſhould not be impriſoned a *venire facias* was awarded with a clauſe of *Superſedeas*, *H.*17 *E.*3. *Execution* 51.

Execution of a Statute was ſued againſt T. who brought *Audita querela*, and *Scire facias*, and was non-ſuit, for which Execution was awarded, then came *G.* as Tenant of Parcel, *&c.* and had an *Audita querela* upon releaſe of the Conuſee ſuppoſing part of the Land of *G.* to be delivered, and as to the reſidue *quia timet*, the Sheriff did certifie that none of his Land was delivered, and the Writ to the Juſtices is to hear him, if Execution be ſued, which is not, to the *Superſedeas* iſſued without warrant, for which Execution awarded, *P.*17 E.3.27. *Audita Querela* 21.

In Dower, the Tenant vouched in a forrein County, the Demandant did recover preſently in the ſame County where the Writ was, but no Execution till the voucher was determined, *H.*13 *H.*4. *Judgment* 221.

Entrie upon diſſeiſin of land and rent, as to the Land it was found for the Demandant, the Rent yet did depend in Plea, the Demandant prayed a *Fieri facias* of the Rent, and had it, and this returned *Fieri feci*. *Littleton* ſaid that the Defendant ſhall not have Error until Judgment be alſo given of the Rent, and in Treſpaſs againſt many no Execution ſhall be againſt any condemned, or acquitted, for which here he prayed a *Superſedeas*, and the money might be delivered to the Defendant till the Rent alſo tryed, *Moil*, it is true in Treſpaſs, but here the Rent and Land are altogether ſeveral, as Debt upon an Obligation and Contract, where recovery of one, or Damages for the one doth not touch the other. *Priſoit*, here is but one Declaration, for which he ſhall not have Error, till the whole be determined, otherwiſe it is where there are ſeveral declarations, as upon ſeveral Precipes it is the uſe, but bring a ſpecial Writ of Error, and we will adviſ eoit, And it ſeems the Error was in that, that Execution was awarded of the Land before Judgment of the Rent, *P.*36 *H.*6. *Fieri facias* 3.36 *H.*6. 14.

Vide C. Execution 26. *a difference taken betwixt a general Nontenure and a ſpecial Nontenure pleaded.*

Note, where in Treſpaſs the Plaintiff had Judgment againſt one, and the other did depend in iſſue, and afterwards barred the Plaintiff, yet upon his prayer he ſhall recover againſt the other, otherwiſe not, 44 *E.*3.8.

A *Scire fac.* upon a fine, the Tenant as to pareel pleaded joynt-tenancy, and as to reſidue a ſpecial Nontenure, for which no Execution without that tryed, which he ſhould have had upon general, Nontenure pleaded, and in a *Scire facias* upon a Recovery upon Nontenure pleaded, he ſhall have Execution at his peril, 11 *H.*4. 16. and he was driven to maintain his writ, and that ſeems to be the cauſe, that in a *Scire facias* Nontenure generally is no Plea. 7 *H.*6. 18. 14 E.4. 2, *&c.*

Upon ſuch grant of Rent in Fee that it ſhall ceaſe during the Nonage of the heir *&c* yet the Wife ſhall recover Dower during the Nonage, but Execution ſhall be ſtayed, 10 *H.*7. 13. *Vide* 22 *E.*3. *acc.*

IX. *Where*

IX. *Where the Survivor ſhall be charged, or the heir of the Executors of the others, and where the Heir, and Executors, and Survivor, and ter-Tenants.*

Scire facias upon a Recovery in Detinue againſt Husband and Wife, the Husband dyed, and the Writ iſſued againſt the Wife as his Executrix, and held good: although as was conceived it might be againſt her as Wife, becauſe ſhe was party to the Judgement, *M.* 13 *H.*4 *Brief* 871. *Vi.* 4 *H.*6.6. where upon an Obligation to Husband and Wife, ſhe brought Debt as Executrix of her Husband.

A Recogniſance made by two, upon the death of one the Party may have Execution againſt the Survivor, or againſt him, the heir, and the ter-Tenant of the other, 13 E.3. *Execution* 78 yet in the Recogniſance it is not mentioned that every one is bound in the whole, 5 E.3.35. *Execution* 110.

Vi.C.5.Part. Blunfields Caſe 29 H. 8. Cont.

But upon Damages recovered againſt two, the execution ſhall not be againſt the Survivor only, and if both be alive, and the one be taken by a *Capias*, the other ſhall be alſo taken, otherwiſe the firſt ſhall be diſcharged, *Vide* 19 E.3 *Execution* 81. 29 E.3.7. *Execution* 155.

Vide C.3. Part. Sr. William Herberts Caſe 1. Cont.

I. and *H.* were bound to E. afterwards *G.* marrieth E and afterwards *G.* is made Adminiſtrator to *H.* with others, *G.* and *E.* his Wife brought action againſt the ſame *G.* and his companions, and held it did well lye, and that he ſhould have ſuch Action upon the Band made by *H.* to himſelf. Afterwards exception was taken that *I.* had alſo made his executors not named, yet all was good, becauſe *H.* did ſurvive him, but at the election, *&c.* And afterwards it was holden that where both are dead, he ought to charge the executor of the ſurvivor *E.* alone. So of a warranty, *&c.* and it was a joynt Obligation, 31 E.3. *Executors* 82.

Obligation made by two, one dyeth, *Hank*, the Obligee ſhall ſue the Survivor with the executor of the other, otherwiſe it ſeems where there are two to whom, *&c.* for the executor of the one ſhall not joyn with the other, *Vi.* 14 *H.*4.1.

Two executors being charged with their proper goods upon *Devaſtaverunt* returned, if one dyeth, the other ſhall be charged alone, or he with the executor of the other 27 E.3.88. *Executors* 95.

And ſome thought that upon a joynt Bond, that the Survivor ſhould be only charged, and not the executor of the other, otherwiſe it is of a warranty, 14 *H.*4 and ſo was the opinion of *Vaviſour* 12 *H.*7.3.

Note, the reaſon is becauſe it is in the perſonalty, but otherwiſe of warranty, becauſe it is a Real Covenant.

X. *When Executors ſhall be ſued in divers Counties and how, and when a Capias in one County, and an Extent in another.*

EXecution againſt one Executor who had denied the Deed of his proper goods, and againſt the others of the goods of the dead, and if they be in divers Counties, and hath proceſſe according, every Sheriff ſhall do Execution of the whole; for the Writ is, *habeas denarios hic*, and if he levy more then the Land, it ſhall be delivered to the Defendant, 17 *E.* 3. 45. *execution* 76. and that execution he prayed firſt.

One prayeth an *elegit* upon a Recogniſance of 40 s. to the Sheriff of *S.* who returned that he had 24 acres, and that he had delivered to the Plaintiff the Moiety, who ſaid he had delivered nothing to him, and ſaid, that the Defendant had 10 l. in *N.* and prayed an *elegit* thither, and in *S.* and it was holden that he ſhould not have execution in another County then where he firſt took it, 18 *E.* 2. *execution* 240. it ſeems to be otherwiſe of a *Capias* for the body, 20 *E.* 3. *Execution* 84.

If one pray Execution of part of the Land upon a Statute Merchant in the name of the whole, he ſhall not afterwards have Execution of the reſt, 22 *E.* 3. 14. *Execution* 134.

The opinon was, that if a man ſue Execution of a Statute Merchant in divers Counties and in each for the portion, *viz.* 20 l. in the one, and 20 l. in the other County, yet upon *nihil* returned in one County he ſhall have Execution of the whole in the other, if he hath Aſſets there 16 *E.* 3. *Execution* 49 and a man may well pray Execution of the body in one County and an *Elegit* of the Land in the other County, 41 E. 3. *execution* 38.

XI. *Where he againſt whom Execution is ſued, ſhall tender the money to the Plaintiff himſelf, or he who hath his eſtate, and where payment to one Plaintiff is good.*

AFter Execution of a Statute, the Recogniſor ſhewed an acquittance of parcell, and tendred the reſidue in Court, and had a *Venire facias* againſt the Creditor and his Aſſignee, the Aſſignee appeared, the other made default, and at another day came and appeared alſo, and the Aſſignee made default, it was holden that the money ſhould be delivered to the Aſſignee who had the intereſt, and the other ſhould have his Land again during the terme, 15 E. 3. *Reſponder.* 3.

Upon a Writ to execute a Statute Merchant, the Debtor was returned dead, and Execution ſued againſt the Ter-tenant, who ſhewed now a defeaſance

feasance with Condition, and had a writ against the Conusee, and also against his alienee, the Conusee appeared, the alienee made default, *Idem dies* was given to the Conusee, without putting him to answer, and a new distresse against the alienee, *H.*15.*E.*3.*Respond.*1.

24 E.3.10. *br.* audita querela 41. 12 *H.* 4.7. *and see* 48 *E.*3. *he shall have but* sicut alias.

In *Audita querela* the Processe is *Venire facias*, *Alias* and *Plures*, and upon *nihil* returned, upon that then a *Capias* shall issue forth against the Consor, *F.N.B.* 104.

Execution sued of a Statute Merchant, the Consor shewed an acquitance of part, and tendred the residue, had a writ to the Justices, and upon that a *Venire facias* against the Conusee, and his Assignee, and the Conusee was returned warned by Mainprise, and the assignee *Nihil*, upon which by *Testatum* processe issued against him in another County, 13 E 3. *Suggestion* 13.

XII. *Whether the Sheriff shall deliver the Lands presently upon the Execution, or ought to return the Extent, and shall have a Writ after delivered to him &c. and how he shall carry himself in doing Execution.*

*C.*5. *part Semaines Case, acc* 91, 92.

THe Sheriff or other Officer of the King, who comes to do Execution may break open the house, if he cannot have the Keyes, for the mischief, *&c.* 18 E.2. *Execution* 252.

The Sheriff may break the house to take a Felon, for the writ is *Non omittas aliquam libertatem*, and the priviledge of the house doth not hold against the King, *Vide* 18 E.3. *br. Coron.* 158. *acc. C.*9. *part.*69.

But see a difference taken where the King hath interest for Felony, and where it is to the party for debt or Trespass, 13 E.4.9. and where the Sheriff upon *Fieri facias* breaks the house, because he cannot otherwise enter and take the goods, now he shall be excused of the taking, but not of the breaking of the house, See, it did not appear there that he could otherwise enter, *P.*7.E 3.16.18 *E.*4.4.

One justified a house as Bailiff upon a *Capias* awarded by the Justices of *Oyer* and *Terminer* upon an endictment of Trespasse, 27 *Ass.* 35. So for Hue and Cry levied upon him who hath hurt another, so as he in danger of death, 7 E.3.16.

A Statute Staple was three times certified, and severall Processe to divers Sheriffes to do execution, one Sheriff extended the Land and kept it in his hand for the King untill a writ issued to deliver it to the party, 2 R. 3.7. Execution 17. the writ here is *& liberari fac*, as upon Statute Merchant, yet a writ issued afterwards to deliver it, *F.N.B.*131. *Vid. C.*5. *part Hoes* Case, *C.*4. *part*, *Fulwoods* Case, all writs of execution, if they be duly done, the execution is good, though the writ be not returned as a *Fieri Facias*, but an Execution by force of an enquest, as an *elegit* must be

be returned, otherwiſe it is not good, *vide* 11. *H.*4 73.*b.M.*15.*Car. in B R. in Collifods Caſe adjudge acc.*

Upon *Elegit*, the Sheriff ought to return the extent, and alſo that he hath delivered the Land *&c.*12 *E.*3.*Scire facias* 117. and the extent ſhall be good for the ſum due, notwithſtanding that it be of more, 44 *E.* 3.11, *execution* 35.

The Sheriff returned the extent upon a Statute Merchant, but that he had not delivered the Land to the party, whereupon the plaintiff prayed that he might be amerced: *Quare* 41 *E.*3.*Execution* 39 and upon Execution ſued of a Statute Merchant acknowledged by husband and wife, the Sheriff returned that he had extended the Land of the Husband, but had not delivered it, and that the wife was dead who had no Land, and he was amerced becauſe he had not delivered the Land, *Quere* if the Land of the wife ſhall be delivered in ſuch Caſe, *T.*14 *E.* 3. *execution* 73. but if an extent be made by the Sheriff, the Plaintiff may refuſe the Land until the body be alſo taken in the ſame County, or in another County, *T.*20.E.3.*execution* 84.

Vi. 40 *E.*3.28. & anxi. 15 *H.*7.15. *the refuſall muſt be at the firſt day the extent is returned, for if he once conſeſſe to the extent, he comes to ſale to pray the Extendors may hold the Land.*

The party may refuſe the Land which is extended too high upon a Statute, otherwiſe he ſhould be concluded to pray in the Common Pleas that the extendors might hold it, 44 E.3.2.*extent* 11.

He may as well refuſe becauſe the Sheriff will not deliver him but part of the Land of the Conuſor; for if he ſhould accept of that he ſhould be concluded to demand the whole afterwards, 10 E.3.*execution* 84.

XIII. *Where Execution ſhall be extinct by Deed, or purchaſe of parcell of the Land, and where ſuſpended.*

IT was holden by the Court, If the Conuſor of a Statute Staple do enfeoff the Conuſee of part of the Land, that the Statute is diſcharged; and if he do enfeoff the Father of the Conuſee, and the Land deſcend it is all one, and all diſcharged by Moil, which *Danby* denied, *M.*35. *H.*6. *vide* 1 *h.*7. 16. *&* 22 *E.* 3.16. And ſee which Moil for the other point, 15 *E.*4.6.

See before in margent, Leak *and* Davies *Caſe.* 15 *Com.in B.R. adjudge acc.*

But the contrary hath been adjudged of a purchaſe in Error, 45 *E.* 3.22. but there it was a Repurchaſe, but the body is firſt charged, then the goods, and the Land which remaineth, *M.*11 H.7.4. the party had Execution againſt a ſtranger who diſſeiſed the Conuſor, *M.* 13 H.7.22.

And a generall Releaſe of his Right in the Land before he hath Execution ſhall not bar him, 45 E.3.22.

vide 5.*H.*7.25. *per Townſend Plo.Com.*72 *in Rolfs Caſe acc.*

But if the Conuſor enfeoff the Conuſee of parcell, and a ſtranger of another parcell, or the ſtranger firſt, and after the Conuſee, the Land in the hand of the ſtranger is diſcharged: So if the Conu- 11 *H.*7.40. 13 *H.*7.6.

ſee enfeoff a ſtranger of parcell, 25 E.3.51. 13 H.7.22. and if the Conuſee purchaſe parcell, and of that doth reinfeoff the Conuſor, and he thereof doth enfeoff a ſtranger, yet the Conuſee ſhall have Execution of it, 45 E.3.22.

The Defendant returned dead at the *Capias* upon a Statute Merchant, a Writ iſſued againſt his Lands, the Sheriff returned that he could not deliver them, becauſe a ſtranger had Execution of another Statute before, and holden a good return, and the party ſhall have *Venire facias*, and Diſtreſſe *infinite* againſt the ſtranger, and no other Proceſſe; for he ſhall not have a *Scire facias* upon ſuggeſtion, 9 *E.*3.24. *execution* 92. 21 *Aſſ* 28. The execution of another by a later Record ſhall not ſuſpend my execution.

When the Land of the the Conuſor comes into divers mens hands, and part deſcends to the Conuſee, the Debt is gone, 34 *Aſſ.*15. *Aſſiſe* 318. *Quere*, *Pigot* yet conceived that he might have execution of the body and goods, but it is holden that if the father, and a ſtranger be bounden to the Son in a Recogniſance or Statute, who hath execution of their Land, and the father dieth, ſo that parcell of the Land diſcends to the Son, that the whole Statute or recogniſance is diſcharged, *M.*15 *E.*46.

One Jointtenant is bound in a Statute, no part of the Land ſhall be liable to Execution if he doth not ſurvive, ſo Land is given to *A.* and *B.* and to the heirs of *A.* ſhall not be bound to the execution of the Statute of *A.* living, 23 *M.*15.E.3.45. *Audita querela* 32.

If *Ceſtuy que uſe*, before the Statute of 19 *H.*7. *cap.*15. makes a Leaſe for years, or acknowledges a Statute Merchant, and the Feoffees enter and defeat it (as they may) yet after the Statute the Leſſee ſhall recover, and the execution ſhall ſtand, as *Fitzherbert* reports, but the book at large ſeems that he ſhall not enter, but ſhall have a re-extent, 7 *H.*7.6. *execution* 19. *T.*11 *H.*7 27.

At the Common Law there was no remedy if a Statute were once avoided, but now the party ſhall have a new *Scire facias*, and execution by the Statute of 32 H.8. *cap.*5.

Vide 34 *H.*6. 47.4 *E.*4.19. 33 *H* 6.48. *Danby* 19 *H* 8.22.47 *E.*3. *Execution* 41. *That he ſhall have Elegit.*

If a man hath Execution of Land in the right of the wife who dieth, and her heir enter unto the Land, the plaintiff ſhall have a new execution, 15 H.7.16. and by *Fitzherbert*, if after a man hath recovered damages or debt, and hath the party in execution who dieth, that now he ſhall have a *Fieri facias* or *elegit* of his goods or Lands, *Fitz. N. B.*246.

XIV. *Where*

XIV. Where Execution ſhall be of the goods of the one for the other, and where of the goods of the villain for the Debt of the Lord.

A *Scire facias* of damages recovered, if the party hath ſold the goods by Colluſion, after Judgement, the ſame is not materiall, *Stouf*, his villains have goods, but they ſhall not be taken in execution if he hath not ſeiſed them. *Scrope*, that I grant you, but we do not grant execution againſt them for that cauſe, and the Plaintiff by *Teſtatum* had execution in another County, 3 E.3. *execution* 108.

Vide C.3. part Fynes Caſe, 13 Eliz. Dyer 295 That the ſale of Goods after Judgment, to prevent Execution is fraudulent coven, vide 22 Aſſ.44 ſo of Lands; C.10. part 57.10 Eliz. Dyer, 6 E.6 Dyer 81.H 41 Eliz. in B.R. Rot.447. Barker and Browne Caſe.

In a Writ upon the Statute, that he do not diſtrain out of his fee, the Defendant did juſtifie as Bailiff for an extent againſt *P.* whoſe villain the Plaintiff is, and good, becauſe upon the matter they are the goods of *P. M.* 19.E.3 *execution* 282.

A *Fieri facias* iſſued for the King to execute an Annuity appertaining to an Abbey in his hands, as iſſuing of a Parſonage, upon which the Sheriff ſold two books of the Church. *Rolf*, the Writ was to do execution of the goods ſpirituall and temporall, and theſe belong to the Pariſhioners and not to the Parſon. So do the Bells and the Churchwardens ſhall have an action for them, but if they were the goods of the Parſon, the King might diſtrain them although the Abbot could not; and although I may diſtrain the beaſts of another upon the Land of my Tenant for my Rent, yet I cannot ſell another mans goods by a *Fieri facias*. *Rolf* and *Babbington*, Goods cannot be given to the Pariſhioners, but to the Church, *S. Deo & eccleſiæ*, ſo they are the goods of the Parſon. *Rolf*, Goods ſhall not be given *Deo & eccleſiæ*, as to a Church Parochiall, but they may well be given to an Abbey *&c. vide* 8. H.5.4. *execution* 166.

XV. Where Execution ſhall not ceaſe, although the right of the Land depends in triall, & where it ſhall ceaſe for the debt of the King.

WAſte by an Abbot which is found, and *Quale jus* iſſued, and *Thorpe* awarded execution for the damages, the right not being tried, 38 E. 3. 27. *execution* 31. ſee 40 E.3.37.*acc.* but the contrary is holden, *T.*14 *E.*3.*execution* 71. and that he ſhall not have execution by parcells, and if the Colluſion be found he ſhall have no damages, *M.* 16 *E.*3.*Colluſion* 21. upon Waſt found for an Abbot by default, the Juſtices would not give Judgment untill the Colluſion was enquired of.

An Abbot did recover in a *Quare impedit* by Confeſſion, but execution

40 E.3.37.b. acc.3.E.4.16. acc.C.10.part 118, Cheneys caſe.4 Ma. Dyer 135.that Execution of damages was ſtayed, till the four points were enquired of.

was ſtayed of the principall and damages, untill the Colluſion was enquired, *P.* 21 *E.*3.55 *Judgement* 149. So where he recovered by default in a *Scita ad Molendinum*, *T.* 18 *E.*3. *Judgement* 120. and it ſeems in a *Quare Impedit* if the Colluſion be found, the King ſhall have the damages, *T.*20 *E.*3. *Colluſion* 34 *Quare*, So in an Aſſiſe where the Biſhop entreth upon the Villain, and a ſtranger put him out, and he recovered in an Aſſiſe, damages ſhall be loſt, for the King ſhall be anſwered of the profits, *M.*41 *E.*3.21.

45 E.3.19. a acc. vide C. Lit. 131.3 Eliz. Dyer 197. in Laſſels caſe,5 Car. in B.R. the Lady Sands caſe. vide 21 Iac. in the court of Wards, See Edward Cooks caſe, adjudge acc.

The Extent of a Statute Merchant was returned, but was not delivered, the Defendant doth ſurmiſe that he is Debtor to the King, and hath a Writ to the Chancellour reciting the ſame, and that being known to the Plaintiff continuance was made untill the Kings Debt was levied, and in the mean time his body was diſcharged, and no *Capias* iſſued, *P.*41.*E.*3. 38. *Execution* 56.

If a man be arreſted for the Debt of another, where he is alſo indebted to the King, he ſhewing the ſame ſhall be committed to the Fleet for the Kings debt, although he was in another Priſon before, or if the other will take upon him to pay the King for him, he may have the Cuſtodie of him untill himſelf be ſatisfied, and afterwards he ſhall be ſent to the firſt priſon, but if a man be arreſted for the Debt of another, where he is outlawed in an Action perſonall, and his Lands and goods ſeiſed for the King, for that it is no reaſon that the Debtee in ſuch Caſe ſhall loſe the advantage of the arreſt, and it was ſaid, if he be impriſoned at anothers ſuit, the ſame matter, upon ſuggeſtion ſhall be entred, and he ſhall have a Writ out of the Chancery to remove his body, 29 E.2.13.*Execution* 39. and *Green* ſaid, that that is by Statute *&c.*

A man ſued Execution by *Elegit* within the year, and a protection was caſt for him, againſt whom the Execution was *&c.* who had not day *&c.* Yet *Wilby* ſaid, becauſe the King hath taken him and his goods in protection, we will not award Execution without a Writ, making it appear that he is not in the Kings Service, *M.* 13 *E.*3 *Protection* 72. and where upon Debt recovered, and the Judgement affirmed in a Writ of Error, the Plaintiff ſued a *Scire facias* to have Execution, and the Defendant caſt a Protection, and upon good adviſe it was allowed, *T.* 15. *H.*7,8. *Protection* 113.

XVII. *Where Execution ſhall be by* Fieri facias, *or by Diſtreſs, and where a Term ſhall be delivered as a Chattel.*

THe Conuſee may well plead that the Lands are extended to high, and that they may be delivered to the extendors, and he ſhall have a *Fieri facias* againſt them 40 *E.*3.26. *Execution* 33 H.6.11. *Fieri facias* 1.

If the Defendant be taken for the Kings fine, yet the Plaintiff ſhall have a *Fieri*

a *Fieri facias* againſt him, 18 *E.* 3. *Execution* 54.

One made a Leaſe for life, rendring the firſt 6 years 6. quarters of Corn, and if he held over 100. ſhil. by the year, and this Rent was to be extended againſt the Leſſor, and the Sheriff did not know if it were a Chattel or a Freehold, and if a Chattel, it ſhall be delivered and ſold by a *Fieri facias*. But it was holden a Freehold, and the Sheriff amerced, becauſe he had not delivered it, *&c.* But a Rent reſerved upon a Leaſe for years is a Chattel, and ſhall be extended by a *Fieri facias* as a Chattel 15 *E.* 3. *execution* 63. And by *Elegit* Term ſhall be delivered as a Chattel 34. *Aſſ.* 4. See in the firſt Caſe, that *Hill* Iuſtice held it a Chattel, becauſe it was in the election of the Tenant, if he would hold over the 6. years. *Quare* the Caſe.

It was holden that upon a Recogniſance forfeited, execution ſhould not be by *Fieri facias* after the year from the date of it 21 *E.* 3. 22. *Execution* 69.

One had recovered an Annuity againſt a Parſon who is dead, and it was behind after for 2. years, & he prayed execution of the firſt year by a *Scire facias*, and for the later by a *Fieri facias* becauſe within the year, but becauſe the Parſon had confeſſed the Action without *Aide* prayer, &c. he was driven to have a *Scire facias* againſt the Succeſſor for the whole, otherwiſe he ſhould have had a *Fieri facias* for the laſt year, 24 *E.* 3. 13. *Execution* 89. *M* 1 E. 3. 3. *Execution.* 104. 32 E. 3. *Proceſs* 57.

Upon a Recogniſance made to pay at diverſe dayes, *Stone* awarded execution of the whole by *Fieri facias*, yet the year was paſt by ſome dayes, & againſt the opinion of the Clarks and other Juſtices, who ſaid that of them a *Scire facias* ought to have iſſued out, and a *Fieri facias* of the Reſidue of the laſt year, becauſe the year was not yet paſt, *Quare this.*

A *Scire facias* after the year for damages recovered in Waſt, and a *Nihil* returned, he ſhall not have an *Elegit* until the Tenants be warned, but he may have a *Fieri facias* without warning of them, 4 *E.* 3. 23. *Execution* 99. *Old N. B.* 168.

The Sheriff returned upon a *Fieri facias*, *mandavi ballivo*, who ſaid that he had ſeiſed to the value, but he could not finde buyers, and becauſe the Court cannot ſend to the Sheriff to have the money here, as they might upon his own extent, therefore they awarded a Writ to the Sheriff to levy the money of the Lands and goods of the bayliff, to the value of that which he had ſeiſed, the ſame Law is upon a ſeiſure of an ancient Sheriff, 5 E. 3. *Execution* 101.

A *Scire facias* upon a Recogniſance againſt the heir, who being warned appeared not, a *Fieri facias* iſſued forth, and that was returned *Nihil*, upon which a *Scire facias* iſſued againſt the Tenants. *Quare* of what thing execution ſhall be by this *Fieri facias* 17. E. 2. *Execution* 139. for a *Fieri facias* is of goods only by *Old N. B.* 168.

Fieri facias for damages recovered in Waſt upon a Leaſe for years, it was returned that the leſſee had no goods but the remnant of the ſame Leaſe, and it was holden that by *ſicut alias*, that the Sheriff might ſell the Leaſe,

as

as well as Pots and Pannes, in the Execution, for the *Fieri facias* is *deterrius & catallis*, &c. 19 *C.* 2. *Execution* 148.

A *Scire facias* the Sheriff returned, *Clericus non habet laicani feodum*, upon which a *Fieri facias* issued *de bonis Ecclesiasticis*, to the Bishop, and yet the Party was not warned 19 *C.*2. *Execution* 151. *Vide C.*4. *Part.* in *Palmers* Case, the Sheriff may sell a Tenure upon a *Fieri facias*: but if he doth misrecite the Terme in the date, it is void, but if he sell also all the Interest which the Party hath in it, the sale is good, and see there. 26 *Eliz.* Sr. *George Sidmors* Case.

If one who hath an Annuity be debtor to the King, he shall have for the same *Fieri facias* without other suit, so of a Rentseck, otherwise it is of a common person, 8 H.5.4. 28 H.6.11. *Fieri facias.*

A *Fieri facias* to the Sheriff to levy the expences of the Knights of the Parliament, the Sheriff may sell the beasts of one of the hundred for the whole, or the beasts of any body he shall finde within the Precinct. 11 *H.*4. 2. *Avowry* 52.

In debt for damages recovered in a special Assise, the Defendant shewed, how that at another time, the Sheriff had levyed the debt by *Fieri facias*, and deliverd to the plaintiff, and it was holden no plea without shewing an Acquittance, because the Writ is to have the money here, and in an especial Assise the Sheriff, when he hath levyed, &c. ought to deliver the money into the hands of the Justices, and if it be a general Assise he must bring the same at the next Sessions, 11 *H.*458. *Burr.* 183. And where the Sheriff said that he had payed the Party, it was said it was no good return, because he ought to have the money here, 13 H.7.1. *Quære*, and whereas the Sheriff said so, and that he had an acquittance of the Party, who averred that he had not payd him, the Sheriff was amerced, and an *Alias* awarded *T.*12. *E.*3. *Averment* 41. *Quære*, for the Law is otherwise in *habere facias seisinam.* 44. E. 3. 11. 3 *E.*4. 22.

In a *Scire facias*, it was pleaded, that the Sheriff had levyed the money by *Fieri facias*, and it was said, that the Plaintiff or defendant (as the Case lay) might have an Action of Trespas against the Sheriff who hath levyed the mony and keepeth it in his hands, and 13 H.7.1. that account lyeth against him) but afterwards *Paston* conceived that the Plea was not good, that he had levyed the money without shewing an Acquittance, or matter of Record, 20 *H.*6, 27 and 28. See according 19 E.3. *Scire facias* 120. And *Paston* said, that it is not like to a *Capias ad satisfaciendum*, where presently by the taking of the Party he is in execution.

The Sheriff returned upon a *Fieri facias*, that he had levyed the money, and that he hath the same in Court, whereas he had not the money at the day, and then a new Sheriff is chosen, and because it was upon Record that the old Sheriff had levyed the money, a *Scire facias* issued forth against him to pay it, and if he cannot, or will not otherwise discharge and pay the money, the Party shall have a *Fieri facias*, or an *Elegit* against the Sheriff of his proper goods, 9 *E.*4. 50. *Scire facias* 2.

XVII. *Where one Defendant may take Execution for the Plaintiff againſt his Companions.*

WHere two were bound in Statute, and execution ſued againſt both, the one was taken and his Land delivered, he had a *Capias* for the Plaintiff againſt his Companion to be Partner of the Charge, becauſe the execution at firſt was ſued againſt them both, *M.* 16 *E.* 3. *Execution*, 43.

A *Scire facias* for damages againſt two attainted of Diſſeiſin, the one was returned dead, and the other warned. *Seton* ſaid, he who appeareth is privy to the wrong for which, *&c.* and no heir nor ter-Tenant is ſued, which if he were the one ſhal not anſwer without the other. And upon a Statute Merchant againſt two, one being taken the other alſo ſhall be arreſted upon his prayer, for the debt is in common, but afterwards becauſe the Court would not have adjourned the Parties upon the execution, the Plaintiff took a Writ againſt the heir, and the ter-Tenant of the other, *M.* 19 *E.* 3. *Execution* 81.

Where 6. were bound in a Statute, and the Lands and goods of two of them were delivered, they had a Writ to the Sheriff to deliver the Lands and goods alſo of the other foure, he returned that they were not to be found, and the Plaintiff did not come to have deliverance, now the portion ſhall not be delivered to the two in execution to help them, but a *Scire facias* ſhal iſſue forth againſt the conuſee to take the portion, or to diſcharge the two for that portion, H. 29 E. 3. 7. *Execution* 155. *T.* 29 E. 3. 38. *Execution* 156. and it was holden that he ought to help himſelf by *Audita querela*, and without that, that he ſhould not have a Writ againſt the others to be diſcharged, 33 *E.* 3. *Execution* 38.

XVIII. *Where Execution ſhall be by* Habere facias ſeiſinam.

H *Abere facias ſeiſinam* upon a Fine of grant and render, at the *pluries*, the Sheriff did return *mandavi ballivo*, who did nothing becauſe the Parties to the fine had nothing, and the Writ of Covenant was not ſued in the Liberty, nor came to him to be ſerved, upon which a *Non omittas* was awarded, 8 E. 3. 12.

Vpon the like Writ the Sheriff returned, that he could do nothing of the reſiſtance of *J. R.* and others, and he was amerced 20. marks, becauſe he did not take *poſſe Comitatus*, and an *Alias* awarded, and alſo a Writ to attach *J. R.* who was taken, & pleaded not guilty, and prayed a Writ againſt the Sheriff to anſwer his falſe return, *H.* 19 *E.* 2. *Execution* 147.

Habere

Habere facias Seiſinam of the place waſted and found, *&c.* And a *Fieri facias* for the damages, and the Sheriff returned that he had not goods, and that none came to him to take the Seiſin, a *Sicut alias* iſſued of the Land, & *Fieri facias* ſhall be general, but by the Writ that Sheriff ought to deliver the reſidue of the Term of the ſame Land, if the Defendant be poſſeſſed of the ſame, and the *Fieri facias* general, although that the Plaintiff doth ſurmiſe that the Defendant holdeth the reſidue of the Land, *P.*19 *E.*2-*Execution* 148.

Reſummons in a Writ of Ward, where it was found for the Plaintiff by *Niſi prius*, and Judgment given in the comman Pleas, that he ſhould recover damages, and it was found that the Infant was within age, but the ſame was not entred, and now after Judgement the Plaintiff prayed that it might be entred, and ſo it was, & he had a Writ to have ſeiſin as if Judgment had bin that he had recovered the Ward, and yet here ſuch Judgement ſhall not be given, nor entred now, *T.*30 *E.*3.11.

XIX. *Where Execution ſhall be by* Capias, *and where upon* Non eſt inventus *returned, and where the Party ſhall be impriſoned, and where at large before the debt be payd.*

IN *Ex gravi quærela*, it was found for the Recogniſee, and execution awarded into diverſe Counties, ſo as to the Sheriff of *L.* a Writ iſſued to do execution of a certain Party 15 20.l. which the Plaintiff did ſuppoſe the Defendant had in *L.* and to take the body until the debt be paid, and he was taken by force of that Proces, and it was conceited, that if he pay the 20.l. that the Sheriff had not power to keep his body longer, but yet when he is at large, the Sheriff of another of the Counties may take him again. *H.*16 *E* 3.*Execution* 49.

Green ſaid, that he had ſeen, where two had bin condemned in Damages, and taken, and the one dyed, that the other payed a Fine before agreement and went at large. *Bank*-Juſtice, that is no Law, 19 *E* 3. *Execution* 81. For he who is taken for a Fine is alſo in execution for the party, if he will not diſſagree and ſue forth another execution is by *Fieri facias*, &c. and preſently upon that ſued he may pay his Fine and go at liberty, 13 *H* 7.1. and 2.14 *H.* 7.28.

But if he otherwiſe go at large, the Party not ſatisfied, it is an eſcape in the Gaoler, yet if he had dyed in priſon, for ſuch Fine a *Scire facias* had lyen againſt his Executors, *M.*7 *H.*6.6. and.7. and *F.N.B.*246 If a man be in execution by *Capias* and dyeth, that the Plaintiff ſhall have a *Fieri facias* againſt his goods.

Upon execution of a Recogniſance ſued, and *Non eſt inventus* returned, execution awarded of the Reſidue, 15 E.3.*Execution* 63. ſo upon a Statute Merchant upon ſuch return execution ſhall be of the Land, 21 *E.*3. 49.

15 *H.*7.5.*a.acc.* 21 E.4.80. *Vide* C.*Lit.* 131. *when the King is entitled to any Fine or duty by the fine of the Party, the Subject ſhall be firſt ſatisfied before the King. Vide* 14 *h.* 7. 1.*acc.* 4 E 4.39. 47 E.3.*execution* 41. *he may have legit.*

Up-

Upon a Statute Merchant a Man ſhall have *Capias*, into one County for the Body, and Proceſs into another for the Land, but if it be confeſſed that the Defendant is alſo endebted to the King, a *Capias* ſhall not iſſue for the Party till the debt of the King be levyed, 41 *E.*3. *Execution* 38.

At *Capias* upon a Statute, If the Sheriff return *non eſt inventus*, and upon another Certificate he is taken upon a *Capias*, this is without Warrant, yet the Party ſhall not be ſet at liberty, 28 *E.*3. 91. *Execution* 93.

A Feme covert being a Diſſeiſereſs with force was impriſoned. 26 *Aſſ.* 7. *Execution* 16. and *P.*8. *Aſſ. execution* 117. not ſo by her Plea.

A *Capias* doth not lye for Damages recovered in Dower, nor upon non ſuit where a *Capias* doth not lye in the Original, 8 *E.*2. *execution* 164. But the Party was impriſoned for Damages recovered in an *Aſſ.* 18 E.2. *Aſſiſe* 382. but that ſeems not to be Law, as it appeareth 14, and 15 *H* 7.5. and 33 *H.*6.20. where upon a Diſſeiſin found with force, a *Capias* for the Kings Fine was granted at the Prayer of the Party, but not a *Capias* for execution, *Proceſs* 97. and a *Capias* lyeth for Damages recovered in a Re-diſſeiſin, but this is by the Statute, 6 E. 4.4 And for the Aſſiſe ſee 15 *H.*7. 5. *execution* 153.

A man ſhall not have a *Capias ad ſatisfaciendum*, but where *Capias* lyeth in the Original, 11 H.9.18. *Vide C.*3. *Part.* Sr. *William Herberts* Caſe 8 H.6.9.22 E.4.22. *acc.*

2 H.2. *Execution* 265 *acc.* *A man ſhall not have a Capias ad ſatisfaciendum, but where Capias lieth in the original.* 11 *H.* 7. 18. *Vide C.*3. *part, Sir William Herberts Caſe.* 8 *H.*6.9.22 *E.*4.22. *acc.*

XX. *Where, and how Execution ſhall be after the Record removed by Error, or otherwiſe.*

A Record was removed out of the Common Pleas at *Dublyn* in *Ireland*, and it was moved, that it ſhould not be removed out of *Ireland* if not by default of the chief Juſtice there, and that Plea was never before him, and therefore it was holden that it ſhould be ſent back, and if the Plaintiff will not ſue to ſend it back, the Defendant ſhall not, but he may ſue *execution* in *Dublyn*, for the Record doth remain in the Roll there, *T.*5 E.2. *error* 89.

A man ſueth a Writ of error, and a *Scire facias*, and is *Non ſuit*, now if he had not a *Superſedeas* before, he ſhall have a new Writ of error, *Scire facias*, and *Superſedeas*, but if he had, Execution ſhall be awarded, yet in that caſe if the Writ abate by the demiſe of the King, he ſhall have a new Writ of error and *Superſedeas*, ſo if it abate becauſe he is made Duke, Biſhop or Knight, *Quære* this, the ſame Law in an *Audita querela*. *Vide* 7 *H.* 45. *Superſedeas* 7.

A *Scire facias* upon error, and he did not appear at the day, for which the other ſued a *Scire facias* for execution, the Plaintiff in error did not appear, and upon a *Capias ad ſatisfaciendum* againſt him, he brought a new

writ of Error, and prayed a *Superſedeas*, and prayed to be delivered, whereas he was taken, becauſe he had not a *Superſedeas* at the firſt, he cannot be delivered, for then the party hath no remedy, otherwiſe it had been if he had not been taken, *H.2.H.7.* 12. *Superſedeas* 5. but where a man was outlawed, and a writ awarded to ſeiſe &c. if he bring a writ of Error he ſhall not have a *Superſedeas*, becauſe the King is party by a mean, 8 *H* 4,5. *Superſedeas* 19.

VVhere the party is ouſted in Execution, or making default upon the *Scire facias*, which he himſelf ſueth, or doth not appear, there he ſhall not have another *Scire facias*, 5 *E.*4. 2. *acc.*

If a man bring an *Audita querela*, and hath a *Superſedeas*, and after is non ſuit, he ſhall have another *audita querela*, but not another *Superſedeas*, 21 *H.*6.34.*b. acc.*

XXI. *Where upon Execution againſt two, the Sheriff may do Execution of the Lands or goods of one, and where he deliveroth more Lands or goods then his commiſſion what ſhall be done and where he may make Partition upon an Execution.*

VVHere upon a *Scire facias* againſt two attainted of diſſeiſin, the Sheriff returned one dead, the other warned, it was holden he might have levied the whole of the Survivour, 19 *E.*3. *execution* 81. 34 *H.*6.37. and 35.*H.*6. 27.

A man doth recover in value againſt two, and hath a writ of execution, the Sheriff doth deliver all the Lands which one had at the day of the execution in a ſtrangers hand unto the value of the Land, the ſtranger hath no remedy to extend the Lands of the other. *Quere*, for it ſeems he ſhall not have an aſſiſe, *H* 12.E.3.*execution* 15.

Upon a Statute Merchant, the Plaintiff may well refuſe parcell of the Land ſo be delivered unto him by the Sheriff, and ſhall have a writ commanding him to deliver the whole Land, *M.* 22 E.3.14.

VVhere in Dower the Sheriff doth deliver to his wife upon her ſuggeſtion the moiety of the Land, the other may have a *Scire facias* againſt the wife, to ſhew why it ſhould not be recovered, and ſhall not have an Aſſiſe by *Skrene*, 22 *R.*2.*Dower* 165.

One ſued *elegit* upon a Recogniſance, the Recogniſor did alledge, that the extent was too low, and prayed a re-extent, and had a *Scire facias*, and now he doth alſo alledge that the Sheriff delivered him more than the moyety, it ſeems he need not ſue a *Scire facias* upon this, but ſhall have a re extent upon the firſt matter, and it ſhall be no iſſue, if the extent were well made, but he ſhall not have Aſſiſe of that &c. for by the *elegit* he might deliver the whole by the name of the moiety, *by Thorp*, *T.* 15 E.3.*execution* 17.

One

One Parcener doth recover in an Aſsiſe againſt the other, and prayeth to hold in ſeveralty, and Judgment was given accordingly, but although the Judgment had not been ſuch, the Sherif might deliver the moiety in ſeveralty, at his pleaſure, and here it is ſaid that a jointenant cannot have Judgment to hold in ſeveralty *T.* 12 *E.* 3. *Judgment* 162.

XXII. *Where Execution ſhall be of the arrearages incurred hanging the Writ, and after the Verdict.*

IT was found for the Plaintiff in Aſsiſe of Rent, and adjourned for difficulty of the Verdict, and being afterwards adjudged for the Plaintiff, he did not recover the arrearages and damages, and alſo his damages after the Verdict, 31 *Aſſ.* 31. *Aſſiſe* 308.

XXIII. *Where Execution ſhall be ſued of a thing whereof no Judgment was given.*

REcovery of a ward, the Judgment was given to have all in damages, and upon a ſuggeſtion the party had a writ of execution for the body of the ward alſo, 30 *E.* 3. 11.

XXIV. *Where Execution ſhall be upon a* Scire facias *returned by the* Teſtatum eſt, *without a* ſicut alias, *and where he ſhall have Execution at his perill.*

A *Scire facias* for damages recovered againſt two, upon *Nihil* returned a *Sicut alias* is awarded by *Teſtatum* into another County, and the one is returned warned, and that the other hath nothing, the Plaintiffe ſhall have Execution at his perill, and it ſeems the *Scire facias* by *Teſtatum* in this caſe from the *Scire facias ſicut alias* in the ſame County, and upon *Nihil* returned at the *ſicut alias* it is clear that execution ſhall be awarded, 18 *H.* 6. 17. *execution* 3. but if at the firſt one was returned warned, and the other *Nihil*, he ought to have a *ſicut alias*, or *Teſtatum* in another County *&c.* but he ſhall not have an *alias* upon the *Teſtatum eſt* returned *&c.* 18 *H.* 3 4. *execution* 12. 40 *E.* 3. 2. 24 *E.* 3. 26. *Scire facias* 141. See it is ſaid, that for Debt or

damages a man ſhall have execution upon the firſt *Scire facias*, not ſo of Land, 24 E.3.25.

Scire facias upon a Recogniſance againſt two, one is returned dead, the other *Nihil*, an *Alias* awarded, and *Idem dies* given, but he ſhall anſwer at the *Alias* returned, otherwiſe *execution* ſhall be, 20 *H.7.* 3.

Upon generall Non-tenure plead in *Scire facias* upon a Recovery, execution ſhall be at the perill of the demandant, which ſhall not be in a *Scire facias* upon a Fine *&c.* 11 *H.*4.16. *execution* 26.

In a *Scire facias* for damages recovered, upon *Nihil* returned Proceſs may iſſue forth by *Teſtatum*, 1 E. 3.4. *execution* 105. And note, that at the firſt day he may have a *Scire facias* by *Teſtatum* into another County if he will, 1 *H.*5.4. *execution* 22.

XXV. *Where Execution awarded for the King, ſhall be alſo ſaid Execution for the place, where not.*

7 *H.*6.6.14 *H.* 7.28. *acc.*

WIthin the year in Treſpaſſe, Execution for the Kings Fine is an Execution for the party, and if he go at large it is an eſcape, but if the party be taken by a *Capias pro Fine* after the peace, it will not help the party, nor in no caſe where he is put to a *Scire facias* for his Execution, and if he dieth within the year, the Defendant taken for his Fine, ſhall not be in execution for the Executors *&c.* 3 *H.* 6. 24. *execution* 92. *R.*3. *Execution* 16. 22 *Aſſ.* 74. *execution* 111.

Vide 4 E.4.16 *and* 12.

Capias pro Fine againſt a man condemned in rediſſeiſin, he was taken and was afterwards outlawed of Felony, the King pardoned him all Felonies, and it was holden that at the prayer of the party he ſhall yet remain in Priſon at his execution; but if he were in execution for the party and afterwards outlawed of Felony, and pardoned, the execution is extinct, becauſe once diſcharged before; but here he was not in Execution for the party at the firſt, wherefore *&c.* and now he is enabled to be in execution, and to anſwer &c. 6 *E.*4.4. *Execution* 13.

13 *H.*7.22.*b.* *acc.* 14 *H.*7.15. 14 *H.*7.19. 1 *H.*7.20. 36 *H.*6. 25.

See that Execution in this action is only by the Statute, and ſhall not be without prayer; for in all Actions the Execution of the King for his Fine ſhall not ſerve the party where *Capias* doth not lye in the originall, or for the execution, 14 H.7.28. 15 H.7.5. 13 H.7.21. 9 *E.*3. *execution* 98. alſo the ſame will not help the party within the year, in caſe where he could not have *Fieri facias*, 15 H.7.5. *execution* 115.

*C.*3 *part. Sir William Herberts Caſe. acc.*

If the Record be removed by Error within the year, and the Defendant taken for the King, the ſame ſhall not help the party, becauſe he is put to a *Scire facias*: ſo if the party be adjourned from the County Court into the Common Pleas within the year; but if all the Juſtices die, or be removed, and others choſen, Execution for the King is here, and for the party, 14 H.7.15. 15 H.7.6.

And

And it was ſaid where he may have *Fieri facias* although *Capias* doth not lye in the Original, ſetting him at large is an eſcape, although the priſoner hath a pardon, or hath payd his fine, 2 R.3. *execution* 16. But after the year the Gaoler may let him at liberty, if the party do not pray that he remain in priſon: and it was there ſaid, that the Plaintiff ſhall not have a *Capias* within the year againſt him who is taken for the Kings fine. 7 *H.* 6 5. *Debt.* 26. 13. *H.* 7. 21.

Note, the *Capias* for the Kings fine is, *ad reſpondendum tam nobis quam parti querenti*, if it be to be intended within the year, 7 *H.* 4 4. *Execution* 110.

But if the King pardon the Defendant his fine before he be taken for it, or wills that a *Superſedeas* be awarded before, *&c.* this is a good diſcharge, ſo as the Party ſhall not have advantage of the Kings fine, if he be not taken for the ſame before, 4 *E.* 4. 16. and 22.

Note, that although the execution for the fine, be an execution for the Party without prayer, and that he may have debt againſt the Gaoler who lets him at large, although it be by the Kings commandment, yet the Party after may take an execution againſt him being at large by *elegit*, or *Fieri facias*, or by *Capias* at his pleaſure, for he is not otherwiſe compelled, yet without his agreement the Gaoler cannot diſmiſſe him, by *Pigot*.

If the Plaintiff ſue an *elegit* after the Defendant is taken for the Kings fine, he ſhall go at large, for ſuch execution doth diſcharge the body, 7 H. 6. 6. and 7. So if he ſue by *Fieri facias*, &c. 18 E. 3. *Execution* 54. yet upon *Nihil* returned he may have a *Capias*, *&c.*

If three are condemned in debt or treſpaſs jointly, and the one is taken only for the Kings fine which the King may do by his Prerogative, the ſame is no execution for the Party, becauſe the King doth not ſue according to the Original, as the Party of neceſſity muſt, 15. *H.* 7. 5. *Execution* 153. So if 3. be attainted of diſſeiſin, *&c.*

XXVI. *Where Execution upon a Fine ſhall be awar ded, and where he ſhall ſhew Coſenage before Execution, where not, and out of what Court Execution ſhall iſſue.*

IN a *Scire facias* upon a Fine as Coſin and heir, if the Tenant make default, the Demandant ſhall have execution without ſhewing how Coſen, 34 *H.* 6. 44.

If a Fine cometh into the Kings Bench by due Proceſs, the Party may ſue execution there, 5 H. 5. 1.

No execution upon *Nontenure* pleaded in a *Scire facias* upon a Fine, be it general or ſpecial, becauſe the Right is not yet tryed, 11 H. 4. 16. *execution* 26.

No

No execution upon a Fine until a *Scire facias* ſerved, 8 E.3.12. *execution* 95.

Upon a Fine leyved here of Lands in *Norwich*, and a *Scire facias* brought, they ſhall have Conuſance, and a Tranſcript of the Fine ſhall be ſent to them, 8 E4.6. *Conuſans* 13.

If a Fine levyed of a Rent-charge or a Rent-ſervice, execution may be ſued by *Scire facias*, yet ſome think that it cannot becauſe it doth not paſſe by Levery, *&c.* but Atturnement, and the Render, if the Fine be engroſſed, but before the engroſſement he may have a *Quem redditum reddit*, or a *Per quæ ſervicia*. But it was holden that a *Scire facias* lyeth to have ſeiſin, and *Quem redditum reddit*, gives but atturnement, and no ſeiſin, and if a man do recover in Cuſtomes and ſervices, or if a Fine be levyed of ſervices, the Sheriff ſhal do execution by diſtreſs, 17 E 3.34 *Scire facias* 8. and 16. See 16 *H.*7.9. and 48 E.3.8, *&c.*

A Fine was ſent into the Treaſury not engroſſed, yet it was a good Fine, and executory, but the Party ſhall not have a *Quid Juris clamat*, nor a *Quem redditum reddit*, nor a *Per quæ ſervicia*, after the Fine engroſſed, 22 *H.*6.13. *Scire facias* 31. *C.*5 *Part. Teys Caſe, acc. Vide F.N.B.*147.*a.*

XXVII. *Where Execution ſhall be ſued by Capias againſt him who was taken before, and in Execution by his Bodie.*

A *Capias* was awarded againſt him, who had found bail to the King where he was outlawed and taken for the Kings Fine, and is now at large, 8 *H.*7.9.

One being in execution in *Newgate* found mainpriſe by Recogniſance in Chancery, and brought *Audita querela*, and did not appear, and afterwards the Mainpernors arreſted him and put him in the Fleet, it was holden that the Mainpernors might chooſe to have execution of his Body and Lands, 50 E.3.12. *execution* 43. So if a Man condemned and impriſoned for the Kings fine eſcape, an Action lyeth againſt the Gaoler, or a *Capias* againſt the Party, 7 *H.*6.5. and 6.

One being in execution in the Kings Bench eſcaped, the Gaoler dyed, his executors ſhall not be charged, for which cauſe a new *Capias* was granted to the Party: 41 *Aſſ.*15. *executors* 100. See contrarie, that he ſhall not have a new *Capias*, for the Bayliff cannot take him again but upon freſh ſuit, but by ſuch way, if he out of his ſight, 14 *H.*7.1. 13 E.4.9, *&c.*

XXVIII *How Execution ſhall be when Lands are extended by a later Statute, or for a Debt recovered after, &c. or where a ſecond Execution ſhall be upon the firſt defeated.*

TEnant by Statute Marchant ſhall not ſue him who hath execution by a later Statute without Proceſs of Law, *&c.* ſo neither Tenant by *elegit*, and the proceſs againſt them ſhal be *Venire facias*, not *ſcire facias*, becauſe there is no record upon which, *&c.* And this was upon *Non eſt inventus* returned, and that the Land was delivered to ?. upon a later Statute, 9 E. 4. 24 *execution* 57. But it is cleer, that he ſhall put him out upon the matter, 19 *E.* 3. *Execut.* 25. 22 E. 3. 7. *Scire facias* 126. And there he ſhall have *Scire facias*, and not *Venire facias*.

He which hath a later Statute, ſheweth that the Term of the firſt who hath execution is expired, and the whole mony levyed, and the Connuſor would not ſue to have the Land delivered back, and prayed execution againſt the firſt, and ſhewed an Acquittance of all but 6 l. long before, *&c.* he prayed execution at his peril, and had a *Scire facias* againſt the grantee of the firſt Conuſee, for without Proceſs he ſhall not put out him who is in by Judgement, 38 E. 3 12. 22 E 3. 7. *Scire facias* 126.

The executors of him who had execution by Statute were ouſted by another who had a later Statute, and had a *Scire facias*, notwithſtanding the execution before had againſt the later, for the Inſtices were deceived, and an Aſſiſe doth not lye, 19 E. 3 *Scire facias* 12.

A was bound to *B.* in 100 l by Statute ſtaple certified in the Chancery, *Anno* 9 E. 4 and afterwards 39 *H* 6. A Stranger entred upon him by grant of the King, and afterwards the Cõnuſor in whoſe right, &c. dyed, ſo as the Connuſee could not take the profits, upon which ſuggeſtion, he had a new *Capias*, where he was taken upon a *Capias* before, but this upon another Certificate 2 H. 3. 7 *Execution* 16.

If the Defendant be taken in *Capias pro fine* in Treſpaſs, and the Plaintiff pray that he may remain in priſon for his execution, the Plaintiff not ſatisfied ſhall have an *elegit* afterwards, ſo if one pray an *elegit* of Lands, and nothing is returned but a Rent, he ſhal have an *elegit* of the ſame, 47 E 3 *execution* 41. See *F. N B.* 246. and *Statute* 32 H. 8. *Cap.* 5

Note, that a man ſhall not held the Land over the Term by *elegit*, becauſe the Land was deſtroyed by War, ſo as he could not take the profits, *M.* 19 E. 2 *execution* 146.

In Dower the wife hath judgement againſt the voucher, and that the Tenant ſhall hold the Land in peace if the vouchee doth reverſe the judgment by diſceit, becauſe he was not ſummoned, and hath reſtitution, the wife ſhall have a *Scire facias* againſt the Tenant to have execution againſt him, 3 E 3. 49. 4 E 3. *Diſceit.* 45.

And

And if a man hath execution in value againſt the vouchee of Land which he hath by diſſeiſin, and the diſſeiſſee entreth upon him who recovereth, he ſhall have a new execution in value, 30 E.1. *Voucher* 297.

Elegit was upon a Recogniſance at the firſt day, when there were ſeveral dayes of payment, *F.N.B.*267.

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29 *Where a man ſhall be put to a* Scire facias *to have Execution, and where not.*

A Recogniſance to appear ſuch a day, and to keep the peace, and he doth not appear, yet execution ſhall be granted without a *Scire facias* 36 *H.*6.17. execution. 10. Otherwiſe it is within the year upon a Recogniſance to appear. See how the year ſhall be accounted, *M.*21 *E.*3.22. Execution 69.

If the Recogniſor alieneth his Land, no execution ſhall be without a *Scire facias* againſt him, and the alienee, 7 E.3.31. *Execution* 53. and 9 E.3. *Execution* 97.

It was holden, that an executor ſhall ſue execution of a ſtatute ſtaple, or Merchant without a *Scire facias*, but not of a Recovery of the Teſtator, *&c.*15 *H.*7.6. But whereupon a certificate of a Statute Marchant *Non eſt inventus* is returned, and the Connuſee dyeth, his executors ſhall not have execution upon the firſt return without a *Scire facias* out of the Certificate, 18 E.3. *Execution* 55.

The Party is alwayes put to a *Scire facias* upon Recovery of Debt, Damages or Annuity, after the year, 24 E.3, 23. *Execution* 89.

Execution ſued of a Statute Marchant, and the Recogniſor returned dead, execution ſhall be againſt the Feoffee without a *Scire facias*, and if one Conuſee be teſtified dead, the other ſhall not have execution, but ſhall be driven to ſue in Chancery upon his Caſe, 25 *E.* 3.38.

And *Fitzh* ſaith *N.B.*167. that upon a Connuſor returned dead, no execution ſhall be againſt the heir, executor, nor ter-Tenant without a *Scire facias.*

But ſee that upon a *Capias* of a Statute Merchant, and death of the Connuſor, or *Non eſt inventus* returned, execution ſhall be without *Scire facias*, but if the Sheriff upon it return, that one hath the Land by judgement, he ſhall not put him out without proceſs, and that ſhall be *Venire facias*, and upon that a *Diſtringas*, and not a *Scire facias*, becauſe it is not upon Record, 9 *E.*3.24. *Execution* 97. 1 E.3.4.22 E.3. *Scire facias* 126.

In a *Scire facias* after the year againſt the Connuſor & he returned dead, execution againſt the heir by *Scire facias*, and it was upon a Recogniſance, to keep his day, 5 E.3. *execution* 100. and he ſhall not have *Fieri facias* of the goods of the dead although within the year, but a *Scire facias* againſt the heir, and Executor, 18 E.2. *execution* 143. So in this caſe it ſhall be againſt the ter-Tenant, 20 E.3. *Scire facias* 121.

Scire

Scire facias upon debt or damages recovered after the year, the Defendant returned warned, doth not appear, no execution ſhall be againſt the Feoffee living the Principal, of Lands which he had at the time of the judgment without another warning againſt the Feoffee, but the Reporter conceives that the execution ſhall be without warning, 1 E.3.4. *execution* 105. So nor againſt executors 19 E.2. *execution* 243. 9 E.3.24. and 6 E.3.15. *execution* 102.

Where Land is extended by ſtatute Merchant or ſtaple, *Scire facias* doth lye to have reſtitution within, or after the Term, not otherwiſe. 19 E.2. *execution* 164.

When a Record is removed into an other Court, as by error into the Kings Bench, a *Scire facias* ſhall iſſue before execution within the year, 21 E.3.56. *enqueſt* 7.

If the Plea be holden in the County, and afterwards, the Juſtices in *Eyre* come into the Conty, they ſhall award execution upon the judgment given by the other Juſtices within the year without *Scire facias*. And Juſtices of Gaol-delivery ſhall award execution againſt a Priſoner who was outlawed, or indicted before Juſtices of the Peace, 15 H.7. 5. *execution* 153.

The firſt Conuſee, ſhall not put out the other without Proces of Law, 9 E.3 *execution* 97 *enqueſt* 11.

XXX. *Where Execution upon* Scire facias *ſhall be upon* Nihil *returned, and where he ought to have* Sicut alias.

Brian ſaith, That the courſe of the common Pleas is to have execution of Debt, Damages, or Annuity, upon a *Nihil* returned at the firſt *Scire facias*, 2 *H.*7.3.

A *Scire facias* againſt two upon Damages recovered and *Nihil* returned, and upon the *Teſtatum* one was returned warned, and the other *Nihil*, and execution awarded, 18 *H.*6.17. *execut.*3.

In a *Scire facias* upon a fine he ſhall not have execution untill the Party be warned if it be upon debt, or damages, and upon 2 *Nihils*, And *Hill* Juſtice ſaid, that of Land execution ſhall not be until the Party be warned in no Caſe 18 E.3 *execution* 57. 4 E.3.23. *execution* 99. *acc.*

Scire facias upon a Recogniſance againſt two, one is returned dead, the other warned, execution ſhall be againſt the Survivor without a *ſicut alias*, if he will, 13 E.3. *execution* 78. But no execution againſt the ter-Tenant until the Conuſor be returned *Nihil*, 28 E.3 32. *execution* 158.

Upon *Nihil* returned in a *Scire facias* for damages, *Fieri facias* awarded, but *Elegit* of land not till the Party be warned, 4 *E.*3.23. but at the firſt *Nihil* returned the party may pray a *Scire facias* againſt the ter-Tenants of the Lands, and if they are returned warned, he may have the Land by *Elegit* 6 E.3.15. 24. E.3.25. *Scire facias* 128.

He who recovereth damages in an Aſſiſe againſt three ſhall have a *Scire*

facias, and two were returned warned, and the third *Nihil*, upon which he had Execution againſt the two, 1 *E.*3. 13. *Execution* 106.

The Defendant in a *Scire facias* was returned, *Clerk* not having any Lay-Fee, and a *Fieri facias* iſſued *de bonis Eccleſiaſticis* awarded to the Biſhop, although he was not warned, 19 *E.*3. *Execution* 151.

Where two were returned *Nihil*, and the third warned, a *Scire facias* by *Teſtatum* iſſued againſt the two into another County, and *Nihil* returned againſt them; then the third appeared and would have pleaded and could not, for Execution ſhould have been awarded, if the two had not been returned *nihil*, ſo that the Proceſſe was not ended againſt them, for which the partie ought to ſtay untill the others be warned, or the Proceſſe ended; as it is at the ſecond *nihil* returned, 2 *E.*3. 20 *Scire facias* 141. 1 *E.* 3. 13.

XXXI. *How he who is in Execution ſhall be diſcharged, and by what act.*

IF one be in Execution by his body, and the party doth releaſe unto him all Actions, Suits and duties, he ſhall not have an *Elegit* nor a *Capias*, becauſe the duty is extinct, 26 H. 6. *Execution* 7. and the Releaſe to one, and the ſaying of the plaintiff in Court, that he will not have Execution againſt one, the ſame doth diſcharge all, 15 *E.*4, 5.

Vide 33. *H.*6. 47.

If I purchaſe a Mannor to which he who hath recovered a Debt againſt me is Villain regardant, and alien the ſame again, now he may well ſue execution againſt me, yet it was once ſuſpended &c. 12 H. 4. *execution* 28.

If a man take execution by part in diverſe Counties, and the party is taken in one, and he payeth that part, yet it is no diſcharge of the reſidue, 16 *E.*3. *Execution* 45. Yet if the Sheriff had taken him by Proceſſe, before the apportionment, as at the firſt *Capias* upon a Statute Merchant, there he might keep him in priſon, notwithſtanding of payment of the part made after, *ibid.*

If a man hath the body in execution for damages, the party may come ſeven years after, and acknowledge agreement made with him, and the other ſhall be diſcharged without *Scire facias* or other proceſſe; the ſame Law upon a Recogniſance or Statute.

See that a Recogniſance, or Statute made, commencing without proceſs, wherefore it may be well diſcharged without proceſs, and ſo not like unto a recovery which is by proceſs, 30 *E.*3. 18. *Suggeſt.* 13. yet there he ſhall go quit in the one caſe and in the other.

See in a Note, 10 H. 4. 3. That if the Plaintiff cannot come in Court to acknowledge agreement made upon damages recovered, the other may have a Writ to another man to take his acknowledgement.

One

One was in the Fleet for execution of a Statute Merchant, and afterwards he brought an Appeal of the death of his brother, and was committed to the Marchalſey, becauſe this is in the Kings Bench, and this is a diſcharge of the Execution, 18 *E.*3. *Outlawry* 47. And a man condemned in the Vacation was in Execution in the Term, and removed by writ of priviledge, becauſe of a Plea depending in the Common Pleas, and was ſet at liberty, that was an erroneous Judgment, but the party had no remedy, 2 *E.*4 8.

One came by *Capias utlagatum*, and pleaded a Plea which was naught, and found Mainpriſe to purſue it, and at the day did not appear, upon which a *Capias* for the Kings Fine was awarded againſt the Mainpernors, and a *Capias utlagatum* againſt the party, 2 *E.*4. 11. *Outlawry* 33.

If a ſtranger recover the Land of the Recogniſor, yet the body doth remain in priſon, but if the Recogniſee doth ſurrender unto him, that diſcharges his body alſo, 15 *E.* 4,5. and ſee there that he ſhall be diſcharged by a *Habeas Corpus* ſued, and upon that a *Scire facias fol.6.* 22 *H.*6.56.ac.

XXXII. *When a man who is in Execution ſhall be removed, and afterwards remanded, and when not.*

A man outlawed for debt was afterwards condemned for the ſame debt by plaint in *London*, and ſent to *Newgate*, aud afterwards had a Pardon and *Scire facias* againſt the party, upon whoſe de ault the pardon was allowed, and it was holden, that he ſhould be ſent back to *Newgate*, yet he ſhewed an acquittance of the Debt, but the ſame ſhould have been pleaded there, 48 *E.*3.22.

A man in *Newgate* for eexcution of a ſtatute merchant had *audita querela*, upon acquittance found and ſpecial bail, afterwards he made default, & the Bailiffs took him and put him into the Fleet, the party may chooſe his Execution againſt the party, or againſt the Bail, 51 *E.*3.12. and he choſe execution againſt the party,& prayed that he might be ſent back to *Newgate*; & it was holden that could not be,but he ſhould continue in the Fleet untill &c. becauſe he was in *Newgate* for that cauſe onely 50 *E.*3.12.

One in execution in *L.* for Treſpaſſe &c. was ſued in an action of Accompt here, and appeared in Cuſtody, and acknowledged the Receipt, and it was holden that when hee hath accompted and made agreement he ſhould be ſent back, afterwards the Plaintiff did acknowledg agreement made,and he was ſent back, 29 *E.*3. 47. *Execution* 160.

A man in *Newgate* for Execution of a Statute, had *Audita querela* here upon a defeaſance, and they were at iſſue here, and afterwards he was Non-ſuit here, for which cauſe he was ſent to the Fleet, and not ſent back to *Newgate*, becauſe he was in the cuſtody of this Court upon the remover *&c.* 33 *E.*3.Execution 161. 41 *E.*3. *Audita querela* 18.

One condemned in Treſpaſſe in the Kings Bench was alſo condemned in *London*, and ſent to *Newgate*, and upon a *Capias ad ſatisfaciendum* awarded from hence, the party acknowledged himſelf to be ſatisfied, upon which it was holden that he ſhould be ſent back to *Newgate* for the debt there, 8 *H.*5.7. *execution* 167.

XXXIII. *How he who acknowledgeth a Statute or a Recogniſance, or his alienee ſhall have back his Land after Execution, and by what Action, and where by Entry.*

THe Land of a man was extended upon a Statute Staple of 100 l. and by the extent returned, it appeared that the Land was of 100 l. by the year, and ſo was delivered, now after the year paſt, the Conuſor ſhewed the ſame in the Chancery, and had a *Scire facias* without any other ſurmiſe, but if he come within the year, and ſheweth that the Conuſee is ſatisfied by any caſualty, the ſame muſt be ſpecially alledged, otherwiſe he ſhall not have a *Scire facias*, or that he hath tendred the Money, and the other refuſed it, and that now he is ready, becauſe it is not intended ſatisfied till the Term end, and note, that after the year paſt, the party ſhall not have back his Land without a *Scire facias*, for it may be that the Conuſor hath cauſe to hold over the Term, but ſee the opinion was after that if the Conuſee had levied the money after the Term, the other ſhould enter without a *Scire facias*, 2 *H.*3.7. *Execution* 17. and ſee *P.* 32. *E.* 3. *Scire facias* 101. agreeing in every point, and there it was a Statute Merchant.

But 15 *H.*7. It was holden that he ſhould not enter after the Term without a *Scire facias*, but after the year he ſhall have it without any ſurmiſe, and *Townſend* ſaid, that if within the Term the Conuſor put the money in Court, or ſhews an acquittance, that he ſhall have a *Scire facias*, but if he do ſurmiſe any caſualty, as by cutting of the wood &c. there he ſhall not have a *ſcire facias*, but a *Venire facias ad computandum*, with a ſurmiſe that he is ſatisfied, 15 *H.*7.15. 47 *E.*3.11. but 22 *Aſſ.* 44. he entered upon tender of the money.

Execution of a Statute Merchant, and within the Term the Conuſor ſhewed an acquittance of part, and tendered the reſt in Court, and had a *Venire facias* againſt the Conuſee and his Aſſignee, who came at the day, and the Conuſee not, againſt whom a Diſtreſſe iſſued forth, and *idem dies* to the Aſſignee, who made default at the day, and the Conuſee came in the Cuſtodie of the Marſhall, and anſwered alone, and ſo he ſhall have a *ſcire facias* within the Term upon a Deed, and that againſt the Conuſee and his Aſſignee, not againſt the Aſſignee alone, for he ſhall not anſwer

to

to the Deed, but the monies were delivered to him, ſo that Proceſſe ſhall be againſt him and the Conuſee, 15 *E.*3. *Reſponder.* 3. but the Feoffee put the money in Court, and had a *ſcire facias* againſt the grantee of the Tenant by Statute ſolely, and holden good, yet both ſtrangers, 46 *Aſſ. ſcire facias* 134.

If Tenant by Statute Staple or Merchant granteth over his eſtate, and the grantor levieth the money by caſualty, the Conuſee ſhall have a *ſcire facias* againſt the grantee onely, and if he levieth the money and afterwards grants his eſtate, it ſhall be againſt them both, 50 *E.*3.16. *Execution* 44.

Tenant by Statute Merchant held over his Term by two years, the Conuſor had a *Venire facias ad computandum*, and upon his default prayed reſtitution of the Land, and alſo a *Venire facias* to accompt, and he ſhall not have them both; for if he take back his Land, he ſhall not have an accompt, but the means and profits after the Term, but he may have the one or the other at his pleaſure, 18 *E.*2. *execution* 144.

Land was extended by *Elegit*, and after the Term ended the Conuſee came by *ſcire facias*, and ſaid that he had not levied all the money, becauſe the Land was impaired by reaſon of warre, and this was holden no plea to retain the Land &c. 19 *E.*3. *execution* 146.

Upon Execution ſued againſt one Feoffee of the Conuſor of a Statute, he ſued an *Audita querela* againſt the other who appeared and ſhewed an acquittance of the Conuſee, upon which the firſt had a *ſcire facias* againſt the Recogniſee to have back the Land, and to anſwer to the Deed, 47 E.3.4. But note the *Audita querela* iſſued from the Common Pleas, and upon that from thence iſſued *Venire facias* againſt the other Feoffee, who appeared and pleaded a Releaſe, 45 E.3.17. *Audita querela* 19. and *Venire facias* alwayes iſſueth out of the Common Pleas, 11 E.4. *acc.*

And note that one Feoffee ſhall never have a Writ to deliver the Land of the other *pro rata*, without ſuing an *Audita querela* againſt him, for every one ought to anſwer, but the Conuſee may ouſt all the Feoffees without anſwer if he will &c. 33 E.3. *Audita querela* 38. but upon a Recogniſance acknowledged in the Common Pleas, one Feoffee ſhall have a *Scire facias* without ſuing an *Audita querela*, 45 E.3. 24. *execution* 40. *Vide* 13 H.7. 22 *b. acc.*

If he who hath Land extended by *elegit*, hath cauſe of re-extent &c. upon ſuggeſtion thereof, he ſhall have a *Venire facias*, and not a *ſcire facias* for the delay, 15 E.3. *ſcire facias* 16. and for that reaſon it was doubted, if a *ſcire facias* ſhould iſſue upon a ſuggeſtion that he had a Ward fallen, by which he had levied the whole money, 15 E 4.5. 22 H.6.56. *vide & Quare.*

The Conuſor of a Statute ſaid within the Term that the Conuſee had levied all the money but 10 l. and that he put in Court, upon which it was holden that he ſhould have a *Scire facias* to have his Land again, and to account as well, as upon an acquittance ſhewed, and that upon *elegit*, 47 *E.*3.11. *Scire facias* 96. 46 *Aſſ. ſcire facias* 34. *ac.* 21. E 3.16. 22 *Aſſ* 44 but he may enter. 47 *E.*3.25. *vide* 44 E.3.14. *acc.*

He

Vide 16. E. 3. *waſt* 100 *and Quære if be in the Reverſion ſhal have Waſt againſt Tenant by* Elegit. *Vide Fitzh. Aſſ. that he ſhall*

Here the moiety of whoſe Land was extended by *Elegit*, ſhewed the money in Court, and ſaid that the other had felled ſo many trees, and prayed *a Scire facias* to receive the money for to reſtore his Land, and to accompt for the trees, and here had it, but *Stone* ſaid, that it did not lye to accompt, but for that he ſhould have his Action upon the Caſe, and if a wood be delivered, the Conuſee cannot fell it, but he may take the Herbage, and an accompt doth not lie, becauſe it was delivered to his own uſe, 21 *E.* 3 16. *Scire facias* 111. See *F. N. B.* 58. where he conceives *Venire facias* to accompt doth lye, and yet alſo he thinks that waſt lyeth.

See 18 *E.* 2. *Execution* 144. where he could not have a *Scire facias* to accompt, and to deliver the Land after the Terme, but held clear, that within the Term he might have a *Scire facias* to accompt, and that is in the nature of a *Venire facias*, but he ſhall not have both within the Term, becauſe he is not then intended ſatisfied: and here note, that the aſſignee had a *Scire facias* againſt the Conuſee, and that upon ſuggeſtion that he was ſatisfied by caſualty, and ſhewed how, 32 *E.* 3. *Scire facias* 101. and agreed that he ſhall have a *Venire facias* to accompt, or a *Scire facias* in the nature of *Venire facias* upon ſuggeſtion onely that he is ſatisfied by a caſualty, without putting the money in Court, but the ſame ſhall not be to deliver the Land, 29 *E.* 3. 1. And when one had ſuch Execution the Conuſor did ſurmiſe that he had levied the whole with Coſts and charges, and 4 l. over, and prayed a *ſcire facias*, and the ſame was granted to have the Land again, but of the Profits he could not have but a *Veni e facias* to accompt, and it did not appear that it was within the Term or after ſuggeſtion, 18 19 *E.* 3.

A man ſhall not have a *Scire facias* within the Term upon a ſuggeſtion that he hath paid: alſo the Lands ſhall not be delivered after untill he hath levied his Coſts and Charges upon Execution of a Statute Merchant, 29 *E.* 3. 36. *Suggeſtion* 15. and the Conuſee needeth not take the Money in Court, if he do not tender him his coſts and charges, 46 *Aſſ. Scire facias* 134.

XXXIV. *Of what Lands or Tenements Execution ſhall be by force of a Statute or Recogniſance, and where the Lands in uſe ſhall be in Execution.*

THE Lands in uſe ſhall be in Execution, by Statute, Recogniſance or *Elegit*. *Quære*, if that be by Equity of the Statute of 1 *R.* 3. before the Statute of 19 *H.* 7. *cap.* 15. 7 *H.* 7. 29. *Execution* 19.

Lands recovered againſt the Conuſor is diſcharged, but if he repurchaſe it, it is charged in whoſe hands ſoever it cometh after the purchaſe. See of the purchaſe of the Conuſee of the whole, or part, 45 *E.* 3. 22. *Execution* 39.

Execution

Execution upon a Recogniſance ſhall not be granted but of Lands which the Recogniſor had the day of &c. untill he be returned *Nihil*, 29 *E.*3.1.*execution* 158. but a Recogniſance ſhall charge all his goods which he had at the day of the entring thereinto, 7 *H.*6.2.

At the *Capias* upon a Statute Merchant, the party was returned dead, the Plaintiff had a Writ for his Land which he had at the day of the Statute or afterwards, the Sheriff returned, that a ſtranger had the Land in Execution for damages recovered after, for which a *Scire facias* iſſued forth againſt the Recoverer, 9 *E.*3.24.

The brother of the Conuſor gave him Land in Tail, this Land was diſcharged by the death of the Conuſor, 5 E.3.35.

One of the two Joint-tenants in Fee is Debtor unto the King upon Record, and dieth, the other ſhall hold the Land diſcharged, but if the husband and joint Leſſee for years, with his wife (being debters to the King upon Record) dieth, the King ſhall have the Term in Execution againſt the Wife, 50 *E.*3.5. So of a ſtranger who recovereth Debt or damages againſt the Husband, by *Babington*, and if execution be done in the life of the husband, it is clear, he ſhall hold it till the whole Debt be levied, 7 *H.* 6.2. Otherwiſe it is if he who recovereth hath not Execution in the life of the husband, 9 H.6.52.

Lands in ancient Demeſne are liable to a Statute Merchant, 2 E.2. and if the Conuſor doth enfeoff the King, the Land is diſcharged of Execution, *F.N.B.* 266.

Where the Sheriff returned that the charges upon the Land did exceed the Land it ſelf by 40 s. the Juſtices would not award Execution, becauſe the party ſhould then never have the Land again, but afterwards he had other Land, ſo as the Land did exceed the charges 10 s. for which cauſe Execution was awarded of the whole, 29 E.3.*execution* 154.

One was bound in a Statute to *J.* & his heirs: *J.* died, his heir ſued Execution againſt *R.* Ter-tenant, who brought *Audita querela*, and ſhewed that the Land was given to the Conuſor, and to his wife in Fee, and that ſhe did ſurvive, and that he is in by her, and holden a good diſcharge, for which cauſe the other ſaid that the gift was to the husband and wife, and to the heirs of the husband, and both are dead, for which *&c.* 25 E.3.45.

Tenant in Tail bound in a Statute dieth, the iſſue in Tail entreth, and enfeoffeth a ſtranger, and it was holden that the Execution ſhould be againſt the Feoffee, although the Iſſue himſelf ſhould hold the Land diſcharged, 19 E.3. *Receipt* 112. and the Feoffee of Tenant in Tail ſhall hold the Land charged, 8 H.7.8.

XXXV. *Where Execution ſhall be againſt the Heir before ſuing againſt the Executor, and where the ter-Tenant and the Heir, and where the Land of the Heir, which he hath by purchaſe, ſhall be charged.*

ONE prayed a *Scire facias* againſt the Heir of damages recovered in Rediſſeiſin, and had it not without firſt ſuing againſt the Executors, for the Land is not charged, but in want of goods, 7 *H.* 31. *Execution* 25. But at his perill he may ſue the Heir alone, or the Ter-Tenant alone, and then if the Executor hath Aſſets, the Writ ſhall abate, 19 *R.*2. *Execution* 163. and therefore the ſureſt way is to ſue the Heir, Executors, and Ter-Tenants, although that the Heir nor Executors have nothing, 46 *E.*3.29. *Brief* 605. and that was upon a Recogniſance.

A *Scire facias* upon a Recogniſance, the party was returned dead, and a *Scire facias* awarded againſt the Heir and Ter-Tenant, and upon a third default *Elegit* granted, 38 *E.*3.12. *Execution* 30. and the Execution good. *Quære*, For in the book the Sheriff did return that there were no Executors, ſo there needed not, and the Execution ſued againſt the Ter-Tenants alone good, although he had had heir if the Ter-Tenant doth not averre that the heir hath Aſſets, 7 *R.*2. *Execution* 46. and with this laſt agrees, 11 *E.*2. *Brief* 266. but ſee before *Diviſion* 5. divers books contrary, and that he ought to ſue the heir and the Ter-Tenant, or the heir firſt; and if he do not appear at the *Fieri facias* being warned, a *Scire facias* ſhall iſſue forth, and upon *Nihil* returned upon that, he ſhall have proceſſe againſt the Ter-Tenants, 17 *E.*2. *Execution* 139.

The Conuſee ſhall have Execution at his peril againſt the Heir of one Conuſor, upon Return that the other hath nothing, if he confeſſe it, 5 *E.* 3.35. *Execution* 100. and 28 *Aſſ.* 45. *Execution* 112. he ſued Execution of damages recovered againſt the Ter-Tenant onely, but it doth not appear there that he had ſued againſt the Heir before.

Where the party againſt whom &c. died, a *Scire facias* iſſued againſt the Ter-Tenant, who counterpleaded the Execution and found againſt him, yet Execution ſhall be of the Lands of the dead, and not of his own Lands, 33 *E.*3. *Execution* 162. But note, it was not demanded againſt him, but he made default *&c.*

A Writ for Execution againſt one Ter-Tenant, where there are many, ſhall not abate, but *idem dies* for him, and ſhall ſue againſt the others, for Execution ſhall not be by parcells, and the one ſhall not anſwer alone untill &c 11 *E.*3 *Brief* 266.

A man may have one *Scire facias* againſt the Heir, and Executor, and another againſt the Ter-Tenant, or againſt them all together, and where a man ſhall name the Ter-Tenants, where not, See 46 *E.*3. *Brief* 605.

Belknap ſaid, That if the heir hath but an Acre by deſcent, he ſhall be charged

charged with 1000 l. by Obligation of his own Lands, which denied that, and that onely the Land which deſcended ſhould be put in Execution, 40 *E.*3.15. But if in Annuity or Debt the Heir plead a falſe Plea, as nothing by Deſcent *&c.* then although he hath but one Acre deſcended, yet he ſhall pay all the Money out of his own Lands, 5 *H.* 2. *Annuity* 21. 19 *E.*3. *Annuity* 26. But there it is ſaid, that in a Formedon, it ſhall be a barre, but a half party, although that he plead, that he hath nothing by Deſcent, and yet hath 33 *E.*3. *E.*3. *Execution* 162.

XXXVI. *Where Lands and Goods ſhall be barred to Execution by the firſt Purchaſe, or by the Judgement onely, or by Enqueſt taken, or by Execution awarded, or by Entry or Plea.*

IF a man recover his warranty *pro loco & tempore*, in a *Warrantia Charta*, he ſhall have Execution of the Land which he hath at the day of the Judgment; ſo upon a Recovery in Debt, but of Chattells, but from the day of the Execution ſued, 2 *H.*4.14. and againſt the Heir he ſhall have Execution of the Lands which he bath by deſcent the day of the *Scire facias* ſued, 46 *E.*3. *lib Aſſ. Garranty eſt Charters* 5.

Upon a demurrer adjudged againſt an Inne-keeper, the Plaintiff could not have *Elegit* of the Lands which he had at the day of the writ brought, but from the day of the Judgement, but if he had recovered by Verdict, he ſhould have had the Lands which he had the day of the Enqueſt firſt taken, but if the Plea had been begun, and Judgment given the ſame Term, Execution ſhould be of the Lands which he had the day he firſt entred into the plea, 42 *E.*3.11.

And ſee when the Plaintiff recovered in Debt, and had a *Scire facias* againſt a ſtranger, a purchaſer who appeared and pleaded, and found againſt him, the Plaintiff had *Elegit* of the Lands of the Feoffor, which the Defendant had the day of the pleading, 33 *E.*3. *Execution* 162.

Waſt found by *Niſi prius*, and Judgment given thereupon in Bank, the Plaintiff had Execution of Lands, which he had the day of the Enqueſt taken, 17 *E.*3.5. becauſe all was but one day, 21 *E.*3.51. *Execution* 68.

It was found for the Plaintiff by *Niſi prius* in a Writ of Meſne, and the Judgment affirmed upon Error in the Kings Bench, Execution ſhall be of the Lands of the Defendant which he had the day of the firſt Enqueſt taken, 15 E,3. *execution* 64. 32 E.3. *acc.* and upon no ſuggeſtion he ſhall not have Execution of Lands before Enqueſt taken in Waſt, 31 E.3. *execution* 66.

Aſſiſe was taken and adjourned into the Common Pleas, for difficulty of Judgment, and in the Common Pleas Judgment given for the Plaintiff, he ſhall have Judgment for the damages of the Lands, the day of the

Judgement, otherwiſe it is of an Enqueſt by *Niſi prius*, becauſe all is one day, 21 E.3.51.

If a Writ be awarded to enquire of Waſt by default, and it is found and returned, Execution ſhall be awarded of the Lands which he had, the day of the enqueſt taken by the Sheriff, for he is Judge there, 7 E.3.7. But ſee 14 E.2. *execution* 144. that it ſhall be onely of the Lands which he had, the day of the Judgment given.

A man doth recover damages in Treſpaſſe, and upon a *Scire facias* returned *Nihil*, had Execution of Lands which he had, the day of the Judgment given, not from the day of the Writ, 6 E. 3.15.1 E.3.4.and in Ward he had *elegit* of Land which he then had, and not the day of the Writ brought, 29 E.3.27.

One ſold his goods by fraud after Judgement, to prevent execution,and the ſame was returned, and the Sale was holden good, and the goods not liable to the execution, 3 E. 3. *execution* 108. but it may be proved that he himſelf took the profit of them, and then *Thorp* was of opinion that ſuch Sale was not good, but ſhould be avoided, although it were by Deed, and execution againſt the Vendee, *Quia fraus & dolus nemini patrocinetur.*

In an Aſſiſe the Plaintiff was amerced a Mark, and holden that the Land which he had after the amerciament ſhould be onely charged 22 *Aſſ.* 32.

In attaint upon falſe Verdict given in Aſſiſe, *Herne* ſaid to the Sheriff that he ſhould enquire of the goods and Chattels of the Defendants which they had aliened after the date of the Attaint, and that he ſhould ſeiſe them into the Kings hands, and alſo to enquire of all the goods *&c.* which were upon the Land, at the time that the Plaintiff did recover, and to ſeiſe them in whoſe hands ſoever they were for the Plaintiffs damages in the ſame County, 8 E 2. *Aſſiſe* 396. 42 E.3.26.

If the King recover a Debt, all the Lands which the party hath at the day of the Writ are charged.

Execution awarded againſt executors, the *Fieri facias* returned, that he who pleaded the falſe Plea had nothing, nor none of the others, of the goods of the dead, but that they had Aſſets, the day of the Originall brought, and nothing after the Writ of execution, upon which execution was awarded of their proper goods which they had at the day of the Originall, 17 E.3.45 *execution* 76.

XXXVII. ***Where Execution shall be by*** **Elegit,** ***and where by Metes and Bounds, and where in another County then where the Writ is brought.***

IN an Action upon the Case against an Inne-keeper, execution shall be by *elegit*, so in an Action upon the Case for Huy and Cry not pursued, 43 *E.*3.11.

Execution of a Recognisance by *elegit* good, 44 *E.*3.11. *Execution* 35. and of what Lands it shall be, See 16 E 3. *execution* 47.

Elegit returned that the party had but two Marks Rent, the Plaintiff prayes a *Capias*, and the opinion was that he should have it, but if the Defendant be taken for the Kings fine, and the Plaintiff pray that he may continue in prison for him &c. he shall not have an *elegit* afterwards, if the party do not dye in prison, 45 E 3. *execution* 52.

Tenant by *elegit* shall have the moiety of the Land by Metes and Bounds, and shall not hold the Land *pro indiviso* 32 E. 3. *execution* 67. But see that execution was made of the moiety, and the Sheriff and the executors who recovered the debt of their Testator, came together towards the Land, and when they were but a little from the close, the Sheriff said to them, I here deliver you Seisin of the moiety, enter into the Close, who entred accordingly, and this was holden to be a sufficient Seisin, and the words were of the Moiety of the whole, so it seems it was without Metes and Bounds, *H.* 2 *E.*2. *execution* 119.

It was said, by the Court that Execution by *elegit*, it doth not lye for, or against an Abbot, 14 *E.*3 *execution* 74. But 19 *E.*3. *execution* 80. such Execution was against an Abbot, and also for him by *elegit*, 20 *E.* 3. *execution* 82. But that *elegit* doth not lie for damages recovered against an Abbot, see 21 *E.*3.11. *execution* 125. contrary that Execution was was granted, *P.*20 E.3. *execution* 83.

One recovered Debt for want of pleading, and had an *elegit* where the Originall was brought, and to four other Sheriffs: So of a Statute Merchant, 24 *E.* 3. 30. *Execution* 91. and where not, see 8 *E.* 2. *execution* 240.

Watson reported a Case, that if the Defendant come by the Bishop, the other shall not have Execution, but where the writ is brought, but if he come by the Sheriff it is otherwise, 30 *E.* 3. *Excommengement* 28. the book seems to be that he shall have Execution where the Bishop &c *lege librum*, because it is obscure &c.

Elegit shall not be upon a *Scire facias Nihil* returned untill the party be warned, 4 *E.*3. 16. *execution* 99. But being warned *elegit*, doth lie, 1 *E.*3. 3. *Execution* 104.

If one accknowledge himself to be indebted in the Common Pleas, without coming in by Processe, the party thereof shall not have *elegit*,

for the Statute of *Weſt* 2 *cap.* 19. is, *cum debitè fuerit recuperat.* and that is meant by Action, 2 *E.*3 *execution* 120. See the Statute, for it ſayes alſo, *vel recognovit &c.*

Execution by *elegit* doth not lie of Lands in ancient Demeſne, 9 *E.*2. *execution* 136. But execution of the whole ſhall be by *elegit*, as of the moyety at one day, and the moyetie at another day, 10 E. 3. *execution* 137.

Adminiſtator charged with Debt without a Deed of the Teſtator, becauſe he himſelf was privy to the Contract, the Plaintiff did recover, and had an *elegit* of the goods of the Teſtator, ſo it lyeth of goods (except the goods of the Plough) as well as of the moyety of the Land, and that is by Statute, 40 E. 3. 10. *execution* 17.

XXXVIII. *How Execution ſhall be upon death,* Nihil, Non eſt inventus, *or* Clericus *returned.*

Execution of a Statute Merchant ſued by two, the Conuſor was returned dead, and execution awarded, but after, the one Plaintiff ſaid, that the other was dead hanging *&c.* and he could not have execution without a Writ out of the Chancery, ſetting forth his Caſe, 25 E. 3 38. *execution* 92. How upon death of the Conuſee, a ſtranger ſhall have execution ſhewing the Statute, ſee *Diviſ.* 4. 11 *E.* 4. 11 *execution* 15. 15 *H.* 7. 16. and where he ſued execution, and one was returned dead, it was awarded that the other ſhould ſue alone upon a Statute Merchant, *P.* 41. E. 3. *execution* 83.

Two ſued Certificate of a Statute Merchant, the Conuſor is returned dead, the Conuſee ſhall have execution preſently, 19 E. 3. *execution* 59. and that of all the Lands which he had the day of the Recogniſance acknowledged, or after, 9 E. 3 24. *execution* 97.

If in a *Scire facias* upon a Recogniſance againſt two, one is returned dead, the other *Nihil*, how he ſhall have execution, See *Diviſion* 5. 13 E. 3. E*xecution* 78.

EXECU-

EXECVTORS, AND ADMINISRATORS.

I. *Where Executors ſhall be charged of their own goods by their Plea, or own act with the Principall, and when onely with damages of their own goods.*

EXecutors ſhall be charged becauſe they had Aſſets at the day of the Writ brought, but goods ſold before Judgment ſhall not be taken in Execution, but their own goods *per Curiam*, 9 *H.*6. 57. *executors* 7.

If upon a *Fieri facias* againſt Executors, the Sheriff doth return that they have nothing in their hands, if it may appear that they have aliened, or waſted the goods of the Teſtator, and if they pay him who hath recovered of a later time, this is Waſt, 9 *H.*6. 9. 5 *H.*7. 27. 9 *E.*4. 12. 21 *E.* 4. 25. The ſame Law where the Sheriff returns *Devaſtaverunt*, 11 *H.* 4. 68. 33 *H.* 6. 24. 34 *H.* 6. 24. and damages for the time of the Teſtator and for their own time.

See in the firſt Caſe, the Recovery ſeems to be naught, becauſe the contrary is confeſſed by the party by his Plea, 9 *H.* 6. 5. 3. H. 7. 11. 34 *H.* 6. 24. 33 *H.* 6. 23.

And if Executors do pay debts which are due by Deed before thoſe which are due by Record, this is a waſting of the goods, and they charged of their own goods. So if an Executor do pay a debt to a Common perſon due by Record before the Debt due to the King, which is alſo upon Record: but of debts due by matter of writing, they are not bounden to pay the one before the other, but if they do pay Legacies before Debts due by ſpecialty, they ſhall be charged of their own goods, 21 *H.* 4. 25. 19 *H.* 6. 49 *and* 50. *If they ſteal the goods of the Teſtator, or contract them to their own uſe, it is a* Devaſtavit 19 *h.* 6. *ac.* *Vide* C. 5. *part.* *Harriſons Caſe acc.*

One Executor came at the Diſtreſſe, and did confeſſe the Action, for which cauſe the Plaintiff recovered againſt them all the Debt and damages of the goods of the Teſtator, 18 *H.* 6. 3. *Executors* 20.

Debt againſt three Executors, it was found that one who pleaded that he never was Executor, was Executor, and that the third who pleaded 33 *H.* 6. 23. *acc.*

that

that he had nothing in his hands, had 5 l. for which it was awarded,
4 H.6.22. that the 5 pound ſhould be recovered againſt him, and the reſt againſt
11 H 6.36.acc. him who was found Executor, againſt his own Plea, 46 *E.*3.9. *Executors* 72.9 *H.*7.15.11 *H.*4.5 the ſame Law where one alone denyeth the Deed which is found, 17 *E.*3.45 *executors* 72. But it ſeems the ſame is not Law, unleſſe it be denying of their own Deed, 6 *E.*4 1.and 34 *H.*6. 24. Yet it is ſaid in 33 *H.*6.34.that they ſhall be charged of their own goods, where they plead a perpetuall barre, and the ſame is found againſt them, but it ſeems the charge ſhall be of goods of the dead, whatſoever Plea they plead, if they have Aſſets,and if not, then of their own goods, 33 *H* 6. *Judgement* 38.

And ſee the better opinion is, that they ſhall be charged of their own
14 H.7.28. goods by no plea, but that they were not Executors, *Priſot* contrary,
15 H.7.8.11 H 6.1.7 *E.*4.8.& 34 *H.*6.25.
11 H.4.5.acc.

If an Executor plead that he hath fully adminiſtred, if Aſſets be found, he ſhall be charged of his own goods, vide 6 *E.*4.0 28 *H.*6.3.acc. *Vide* 39 *H.*7.*per Executors* 12 *vide* 46 *E.*3.9 *and* 10, *The ſame for Debt againſt Adminiſtrators, who plead that they are not Adminiſtrators, which is found againſt them, they ſhall be charged of their own goods.*

11 H.4.5. And upon the Plea, that they were never executors, *Moyl* ſaid, that Judgment for the Debt and damages ſhall be of the Goods of the dead, and that upon a *Nihil* returned, afterwards an eſpeciall Writ ſhall iſſue of their own goods, as upon a *Devaſtavit* returned, the Judgement ſhall be conditionall by *Needham*, if &c. 33 *H.* 6.2 *E.*4.4. and *Moyl* conceives, that upon fully adminiſtred, and ſuch Pleas found againſt them, they ſhall be charged of their goods, as to the damages.

If a demurrer upon a Plea be adjudged againſt them, the Judgment for the damages ſhall be of the goods of the dead, if they have any, *Priſot* 31 *H.*6.4. and 11 *H.*4,5.

If Judgment be given againſt them of the goods of the dead, and the Sheriff returns, that they had Aſſets the day of the originall, but nothing at the time of the Execution ſued, Execution ſhall be of their own goods, 17 *E.*3.45.

Debt againſt Executors upon an Obligation of 20 l. they plead that they had nothing in their hands, and it was found that they had 10 l. wherefore the Plaintiff recovered of the goods of the dead, and damages of their own goods, 3 *H.*6.4 *executors* 2.

II. *Where Executors ſhall be charged with a Debt, which the Teſtator was not charged with, and where they ſhall have Debt which the Teſtator could not have.*

A Man grants to his eldeſt ſon 4 s. of the yearly rent of ſuch Land, *&c.* the Son brings Debt for the arrearages againſt the Executors, and good, notwithſtanding the Land deſcends to him, becauſe he may chooſe to have it as an Annuity, or as a Rent-charge, 45 *E.* 3 *Executors* 71. The ſame Law of an Annuity granted to a ſtranger during the life of the grantor, otherwiſe not, 7 *E.* 4. 26. *Debt* 85 9 *E.* 4. 48. *Debt* 90.

Executors ſhall not have Debt for arrearages of Rent reſerved upon a Leaſe for life, becauſe it is a Rent-ſervice, and belongs to the heir, otherwiſe it is of a Rent-charge determined by his death, 4 E. 3. *executors* 98. 2 *H.* 6. 8. *Debt* 11. *Quære.*

If a man grants a Rent-charge for life, and afterwards alieneth the Land, and the grantee dyeth, his executors ſhall not have Debt for the arrearages againſt any body 11 *H.* 4. 92. by *Thirn*, but *Hanckford* ſaid, that they ſhould have Debt againſt the Ter-Tenant, and that was (as it ſeems) for his time, 26. E. 3. 64. *Debt* 180.

A man grants the Reverſion of his Tenant for life in Tail, rendring Rent during his life, and other ſervice after his death, and dyeth. The Executors ſhall not have Debt for arrearages due during the life of the Leſſee, other for arrearages after his death, 17 E. 2. *Executors* 112. *vide* 4. E. 3. *executors* 98.

Tenant for life maketh a Leaſe for years rendring Rent, the Leſſee for years ſows the Land, the Leſſor dieth, the Leſſee ſhall hold the Land for that year, and the Executors ſhall have Debt for the Rent of it, 32 E. 3. *Debt* 9. 14 *H.* 6. 26. But he ſhall loſe the corn which is ſowed, by pleading that he did no wrong againſt the firſt Leſſor, in an Aſſiſe.

If a Rent-charge is aſſigned to a woman for Dower, her Executor ſhall have Debt for the arrearages, 32 E. 3. *Debt.* 9. So the Executors of him who ſurrendreth a Corodie unto an Abbot rendring Rent, 12 H. 4. 17. *Debt* 116.

One had a penſion of 20 l. during the war, to be paid at four Terms, and the firſt Term being paſt, the Grantor dyeth, Debt lyeth againſt his executors for that Term, and the Rent ſhall ceaſe by his death, 2 *E.* 3. 84. *Debt* 143. *vide* 10 *H.* 6. 24. 12 H. 6. 12.

If Executors do accompt of the Receipt of the Teſtator, and are found in arrearrages, Debt lyeth againſt them, yet no Action, if no accoumpt of their Teſtator, 2 H. 4. 13. *Executors* 49.

III. *Where*

III. *Where Executors shall be charged by their admittance of that which they should not be charged with of Right, as of Contract or Trespasse of their Testator &c. and where he might have waged his Law.*

DEbt brought against Executors upon a simple Contract is good if they admit it, and such Recovery shall be executed, 46 *E.* 3. 10. So in Debt against them of arrearages of accompt, of a thing which lyeth not in accompt, they shall be charged if they pray not Execution, although their Testator might have waged his Law, 13 *H.*6. *executors* 21. and if they will accompt upon the Receit of their Testator, and if arrearages be found, Debt lyeth for them, and they have no remedy, 2 *H.*4. 13.

Vide 44 *E.* 3. 42. 10 *H.* 6. 16.

Executor charged by Contract of the Testator with his own deed of the Debt, when he was Attorney generall to the Testator; the same Law of Administrators, 46 *E.* 3. 10. *Administrators* 17

A servant who is compellable to serve by the Statute of Labourers shall have Debt against the Executors of his Master without a Deed, but not if he were not compellable to serve &c. 4 *H.*6. 19. *Executors* 4. 2 H. 4. 14. *executors* 50. and it seems this is of a servant of husbandry onely.

Debt doth not lie against Executors upon arrearages of an accompt, where their Testator might have waged his Law, and therefore they may well pray that the Plaintiff be examined, if the thing lay in accompt or not 13 H. 6. *Executors* 21.

If the Testator do burn a Charter which is delivered to him by Indenture, Detinue lyeth of that against his Executors, and for the damages of the goods of the dead by *Hanck*, but *Hill* held that the Executors should not be charged but when the Testator was bound in a summe certain, 11 H. 4. 47. *Executors* 56.

15 *Eliz. Dyer* 312 *acc.* 10 *Eliz. Dy.* 271. *it lies not against the heir of the Warden of the Fleet for an escape.*

Debt doth not lye against the Executors of the Gaoler who suffereth Prisoners condemned to escape, 40 *E.* 3. *Executors* 74. 41 *Ass.* 15.

And held that Debt doth not lye against the Executor of the Ordinary, 11 E. 3. *executors* 77. But there *Trew* alledged the contrary to be adjudged, 16 E. 2.

Executors shall not be charged by a Tallie sealed by the Testator, because he might have waged his Law against it, 25 E. 3. 40. 12 H. 4. 23.

Covenant against Executors upon the same broken in the life of the Testator, as if he covenant by Indenture, that *J. S.* shall serve me, 47 E. 3. 22.

Detinue upon the Custome *de Rationabili parte bonorum* lyeth against the executors after the Debts payed, 30 E. 3. 25 *Detinue* 52, 28 H. 6. 5. 5 *E.* 4. 21. *F.N.B.* 122. and by *Glanvil lib.* 7. *cap.* 6. It seems that was the common

mon Law, although that the Writ mentions the Cuſtome, See *Magna Charta cap.* 18. 40 E. 3. 38.

Detinue againſt executors upon a bailment to the Teſtator, where they have poſſeſſion, and they ſhall be charged as executors, and he who appears at the Diſtreſſe ſhall anſwer, and that they were never executors, is a good plea, 11 H. 4. 44. 14 H. 4. 28. 21 H. 6. 1. and 11 H. 4. It is holden that Covenant lieth againſt an executor, but not Treſpaſs for the wrong done by the Teſtator, nor no Action for a duty or thing not certain, Debt againſt executors upon a Deed of annuity of the Teſtator 39 H. 6. 27.

IV. *What ſhall be ſaid* Devaſtavit *of the goods of the dead, and how Executors ſhall be charged of them.*

COnverting of the goods to their own proper uſe is a *Devaſtavit*, 39 H. 6. 45. but not if they have redeemed the goods before with their own proper monies, 21 E. 4. 2. 20 H 2. and 20 H. 7. 5. *acc.* becauſe by the redeeming of the goods, the proper plea of them is changed. 6 H. 8. *Dyer* 2 *Plo. Com.* 3 *Ma. Dy.* 187.

If they eſſoign the goods depending a *Scire facias* upon a Recovery againſt the Teſtator, this is a waſting of the goods, 12 E. 3. executors 73. 9 H. 6. 57.

Releaſe unto the Debtor of the Teſtator is a *Devaſtavit*, 13 E. 3. and 6 H. 43. if they pay Debts upon Contract before Debts upon Record: So if they pay the Children their portions before Debts, 21 E. 4. 21. 30 E. 3 25. So if they pay a Bond not then due, and not that which is due, 9 E. 4. 13. by *Bryan.* 7 E. 4. 20. 5 H. 7. 27. *acc.*

When a new Writ is brought againſt executors by Journey accompts, they ſhall be charged with the goods which they had at the day of the Writ brought, and the adminiſtring of them depending, the firſt ſuit to any other is a waſting, but that they had nothing in their hands after notice is a good Plea, where the Action brought againſt them in a forreign County, &c. 48 *E.* 3. 21. 2 H. 4. 23.

And note that arreſt by *Capias* and the like make ſufficient notice, but payment of Debts upon Record due before ſhall well diſcharge them, notwithſtanding the Action depending and notice, but of an action brought in the ſame County, notice is not traverſable, and upon ſuch Waſting, the Judgement ſhall be conditionall of the goods of the Teſtator, if they have any &c. 2 H. 4. 13.

And if three Actions do depend againſt them, they may pay firſt which they pleaſe, and no waſting of the goods before Judgment, ſo if they be ſued in divers Counties, by *Dyer 7 Eliz.* *Dr. and Student* 76 *acc.*

V. *Where Executors have Aſſets in their hands, and what thing ſhall be ſaid Aſſets, and where they ſhall retein for their own Debt, and Aſſets in two places.*

14 *Eliz.* Dyer 310 *acc* 10 *Eliz.* Dyer 264. *ac.*

IF a man deviſeth Lands to his Executors to ſell and diſtribute for his Soul &c. and they ſell them accordingly, this is good Aſſets, the ſame Law if he enfeoff them to the ſame intent, 3 *H.*6.3. 2 *H.*4.23. alſo the profit of the Land before the ſale, is good, *Aſſets* 38. *Aſſ.*3.

Damages recovered in Treſpaſſe of goods carrried away in the life of the Teſtator is good *Aſſets*, 21 *E.*4.4.3 *H.*6 3.

Plo. Com. 186. 110. *E.* 4, 17. 21 *E.*4.3. 4 *H.*7.4. *vide when the debt is ex.inct, when not.*

If the Debtee maketh the Debtor and others his Executors, the Debt in the hands of him is good Aſſets for a ſtranger, by *Choke* and *Danby*, but his companion ſhall not have an Action *&c. Pigot* and *Littleton* ſay, that the Debt is extinct, 8 *E.*4.3. 21 *H.*7.31. agrees with *Danby*, and that if the Debtee make the debtor ſole Executor, the Debt is extinct, not in the firſt Caſe, if not that the Debtor ſurvive the other, but it is holden and ruled to be extinct in both Caſes, 20 H. 7. 17. and 8 *E.*4.3. it is ſaid, if a Debtor marrieth with the Debtee, the whole debt is extinct: So although a Divorce be after, 11 H.7.4.11 H. 4. 82. but againſt that is 26 H.8.7. And if the Debtor firſt dieth in the principall Caſe, the ſurvivor ſhall not have an action againſt his Executors for the Debt of the Teſtator, 20 *E.*4.17. and it ſeems the debt is extinct, although that the Debtor Executor doth not adminiſter, but the debtee being Executor of the debtor with another, the debt is not thereby extinct till he adminiſter, *ibidem*, and 21 E.4.3.12 H.4. 21 *Barre* 188. but 31 *E.*3. *Executors* 82. ſeems that the debt is not gone by the Adminiſtration of the Debtee; and it is there ſaid, if the debtee marrieth one of the Executors of the Debtor, ſhe and her Husband may bring debt againſt the Executors, *ibidem*, but it is holden that the debt ſhall be extinct by the Adminiſtration of the husband before the marriage, 11 H.4. 82. and the opinion of *Read* is, that if the debtor make the debtee his ſole Executor, that he may retain to pay himſelf, 20 H.7. 5.31 *E.*3. *Executors* 82.12 H.4.2.

Money recovered againſt Executors ſhall not be ſaid Aſſets to him who brings another action againſt them before Execution ſued, 9 *E.*4. 12.5 H.7.29.

A Pawn redeemed with their own proper monies, ſhall be Aſſets for the Surpluſage of the value *&c.* 20 H. 7. 5. 21 *E.*4. *acc.*

Executors may well retain the goods of the dead, which come to them after they have paid of their proper goods for him, 20 H.7.5. *Choke* thinks not without agreement of the Ordinary, 21 *E.*4.25.

4. *Eliz. Dyer* 208. In debt againſt Executors: Iſſue was whether Aſſets or no Aſſets, and Evidence was given that by an Order of the Prerogative, and money was to be brought, and to be delivered to the Executors

tors out of Court, and he by the ſame Order was preſently to pay it over to another, yet in that caſe it was Aſſets in his hands.

Goods ſold and re-bought of the Executors without fraud, ſhall not be Aſſets in their hands, but onely the monie &c. Otherwiſe it is of a Sale by covin, if they come again to their hands 18 H. 6. 4. and 5. So of the Sale of the Husband, of the goods which the wife hath as Executor.

If the Teſtator be indebted to two ſeverally, to each in 40 l. and leaves onely 40 l. in goods, if the Executors agree with one for 10 l. and have acquittance for the whole 40 l. the reſidue ſhall be Aſſets to the action of another, 27 H. 8. 6.

Two Tenants in Common of a Leaſe, one maketh the other his Executor and dieth, the moyetie is Aſſets in the Executors hands, 21 *Jacobi in B. R. adjudge acc.*

The goods ſhall be Aſſets according to the very value, and the appraiſement in the inventorie is nothing in our Law, 20 H. 7. 5. by *Hody*, Chief Baron.

T. 39 Eliz. in the Common Pleas, the caſe was this, Francis Kitley *made two Infants his Executors, Adminiſtration was granted* durante minore ætate. *In the Adminiſtrators hands were goods of the value of* 4000 *l. the Infants at full age releaſe to the Adminiſtrators, adjudged, the* 4000 *l. was Aſſets, and the Releaſe of the Infants Executors a waſting of the eſtate, accordingly to* 6. 5. *part* Princes *Caſe.*

Upon fully adminiſtred pleaded, the Plaintiff ſhall not take Iſſue, that there are Aſſets in two Counties but in one, yet it may be that he hath a property in every County, and upon the Iſſue he ſhall recover but in one, *Quare P.* 18. E. 2. Executors 114. and Adminiſtration ſhall not be alledged in divers Dioceſſes againſt the Ordinary, *M.* 12 *R.* 2 *Adminiſtr.* 21 But ſee where one traverſeth a deed which is found againſt him, the Judgement ſhall be againſt him of his goods, and againſt the others of the goods of the dead, and being in divers Counties Proceſſe ſhall be made to both Sheriffs, and the Writ is to have the money here, and if one Sheriff hath it, the other ſhall not do execution, 17 *E.* 3 45. *Execution* 76.

VI. *What thing ſhall be ſaid an Adminiſtration to charge one as Executor or Adminiſtrator, what not.*

EXpences about the Funeralls is not an Adminiſtration to bind him, but a work of Charity, and every one may do it, 20 H. 7. 5. 21 *E.* 4. 6. 21 H. 6. 28. and the party may plead it, without that, that he did adminiſter in any other manner, 37 H. 6. *Adminiſtr.* 7. medling with the goods of the dead is no adminiſtring, without paying or taking of them

&c. But if he meddle and pay debts with his own monies, this is a good Administration, 20 H. 7 5. and this is meant of Executors by wrong, for if Executors of Right meddle with the goods, the same is an Administration without any more, 21 *E.*4.6

That stranger claims the goods of the dead as his own, and converts who them to his own proper use, shall not be charged as Executor, otherwise it is, if upon such claim he convert them to the use of the Testator, 22 H 6.7. and this is of an Executor in fact. *Bryan* saith, if he first meddle with thegoods, and afterwards converts them to his use,he shall be charged, 20E.4 17. and see agreeing to 32 H.6 21 H.6.28. 41 *E.*3. 31. 9 *E.*4. 20. and all the Books are of Executors in Right, for Executors of wrong ere not without expresse admin istring as Executors, 50 *E.*3. 9.*acc.*

If the wife taketh her apparrell devised to her by her husband, this is no Administration, 33 H.6.31. contrary, if she were made Executrix by her husband, if the same were not by the delivery of the other Executors, 11 H.4.83. and therewith agrees 37 H.6 *Administr.*7. of taking of her necessary apparrell.

And if the wife misuse the goods of her husband which she hath by reason of her Quarentine,the same is no Administration,19 H.6.14.

If one deliver me goods to keep untill after his death, and then to dispose of them for his soul, if I am Executor for those goods,8 *E.*4.5.*&* 8 *E.*4.3.

If the Ordinary doth sequester upon refusall of the Executors, an Action lyeth against him as Ordinary, notwithstanding that there are Executors 9 *E.*43.3.

Sale of an Executor by force of a devise, is an Administration, and if he who administreth of wrong taketh Letters of Administration before an Action brought against him, he shall be charged as Administrator, and not as executor of his wrong, 9 *E.*4.33. and 9 *E.*4. 47. But the taking of Letters of Administration shall not abate a Writ brought against him before as executor,21 H.6 8.*Executors* 16.

9 Eliz. Dyer 255. If a man hath a Letter to collect and sell, if he sell, it is an Administration. C.9.part Henslows Case, acc.

A Letter to collect and to accompt to the Ordinary, doth not make the party executor, 21 H.6.27

An Acquittance made as executor, is a good Administration, 13 *E.*3. *executors* 91.6.H.4.3.

A Sale by a Bailiff upon a warrant from the Sheriff, who hath a *Levari facias* for the King, is no Administration, 8 *R.*2 *executors* 122.

Debt brought against an executor because he hath administred, it shall be a good Plea for him that the goods of the Testator came not to his hands after his death, 21 H.6.19. executor 44.

A Probate of the Will is no Administration, because it is *opus spirituale*, 27 H.8.11. but if he pay the Fees with the goods of the dead, it is otherwise, 26 H.8.7.

The Ordinary committed Administration to *B.* who said he would see the

the goods and be adviſed, and upon adviſement he refuſed, and delivered back the Letter of Adminiſtration to the Ordinary, the ſame is no adminiſtration, and in an action againſt him, he ſhall not conclude, without that, that he did adminiſter in other manner, becauſe this is none, 37 *H.6. Adminiſtrat.7.*

VII. *Wher one ſhall be charged as Executor, as Adminiſtrator, or as Ordinary, and who ſhall be ſaid Executor, who coadjutor and who ſurveyor.*

DEbt doth not lie againſt an Executor as Adminiſtrator, nor *è contra*, 9 *H.6.7.* nor againſt the Ordinary as Executor, or as Adminiſtrator, 9 *E.4.33.* and if the Ordinary be made Executor, and refuſeth, and doth not prove the Will, the Action ſhall be agianſt him as Ordinary, and againſt his Committee, as Adminiſtrators in that Caſe, 20 *H.6.1.* And he who adminiſters of his wrong ſhall be charged as Executor, and not as Adminiſtrator, 11 *H.4.71.* and if I will that *J.S.* ſhall diſpoſe my goods being in his keeping, he is Executor as to them.

C.9 part' Heaſloes Caſe.

Vide 8 E.4,5. & 8 E.4.3. before acc.

Fitzh. ſaith, If a man make two Executors, provided that one ſhall not adminiſter, this is good, and the one onely ſhall be charged, but he ought to joyn the other in an Action, and he ſaith, that if a man make two Executor, and that the one ſhall adminiſter the goods in one Town or Dioceſs, and the other in another &c. this is good, and they are ſpeciall Executors, but *Engleſield* and *Brudnell* held this ſeverall limitation void, becauſe repugnant to the premiſes, 19 *H.8.8.* and with theſe agreeth *Martin*, 3 *H.6.7.* but *Babington* contrary there.

19 *H.8. Dyer acc.*

A man makes two Executors, provided, that if they will not *&c.* that others ſhall be *&c.* this is good, and the others are onely Executors by the refuſall of the firſt, and they diſcharged by the affirmative, becauſe every condition doth imply a negative, and Debt doth not lie by any means againſt the firſt, and the others together, 3 *H.6.6. Brief* 11. As a Deviſe, that his Executors ſhall ſell, and upon their refuſall the Pariſhioners, &c. now they ſhall not joyn with the Executors, 49 *E.3.17.*

A man makes *A.* and *B.* his Executors, and beſides I will, that *J.* and *K.* be coadjutors to diſtribute, as *A.* and *B.* no Action lyeth againſt *J.* and *K* 21 *H.6.6. Executors* 43.

If the firſt Teſtament be diſproved by a later, all acts by the firſt are void, and no action againſt the firſt, becauſe his authority is diſproved, *vide* 4 *H.7.13.* 21 *H.6.8.* as he who adminiſters of his wrong, having Letters of Adminiſtration ſhall be no more charged as Executor, 9 *E.4.* 33. 21 *H.6.8.* and 9 *E.4.47.* that an action by the one name or the other is good, But if he hath waſted the goods before the Adminiſtration

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committed unto him he ſhall be charged as Executor, becauſe otherwiſe he ſhould not anſwer but for the goods which came unto him after the Adminiſtration committed, 2 *R.* 3. 20. 13 H.4. executors 118. 21 H.6. 8. & 24.

If the Ordinary commit Adminiſtration becauſe the Will is not proved, and the Adminiſtrator brings debt againſt the executor, depending which the Will is proved, the Writ ſhall abate, 7 E.4. 13. and *Keble* ſaith, that after Probat the executor ſhall have Treſpaſſe againſt the Adminiſtrator for the goods taken before, 10 *H.*7. 18.

The refuſall of an executor before the Ordinary after that he hath adminiſtred is void, 9 *E.* 4. 32. 21 H.6. 23. 18 H.6. 29.

If a man make *A.* and *B.* executors, and beſides I will that *C.* and *D.* ſhall be executors with *A.* and *B.* or that *C.* and *D.* ſhall adminiſter with *A* and *B.* all are executors to the intent that *C.* and *D.* adminiſter with *A.* and *B.* but not as executors, but as Coadjutors, nor without *A.* and *B.* nor ſhall not have an Action, nor no Action againſt them, and they ſhall not prove the Will, ſo it is of Overſeers, 21 H.6. 6. 17 *E.* 2. *executors* 113. 34. *E.* 3 *executors* 121.

A writ againſt three executors, whereas one is but executor of his wrong, is good, for he ſhall not abate it, if he doth not ſay, that he was never executor &c. 21 *H.*6. 19. *Executors* 44. 21 H.6. 8. and therewith agrees 39 H.6. 46. 10 H.6. 27. 33 H.6. 38. but an Executor by wrong, and an executor of Right ſhall never joyn in an action, and there it is ſaid, that an action lieth againſt Executors, & Executors of Executors together, if they do adminiſter, but not by the name of executors of executors, 31 H.6. 46. 13 *E.* 3 *executors* 22. and the executors of Right may have Treſpaſſe againſt the others, if they do adminiſter.

In an Action againſt two, as executors, where the one is but executor of his wrong, and upon the default of the other he confeſſeth the Action, the other hath no remedy, but an Action of diſceipt againſt him, 9 *E.* 4. 13. But *Littleton* ſaith, if both appear, and the right executor plead, and the other confeſſeth the Action, the rightfull executor may well ſay, that the other was never executor &c. *Quære*, if he hath adminiſtred as executor, 9 *E.* 3. 13.

He who had but a Letter to collect, ſhall accompt to the Ordinary, and an Action doth not lye againſt him, but againſt the Ordinary, 21 H.6. 27. And *Bryan* ſaith, that if a ſpeciall Adminiſtration be committed, as that he ſhall adminiſter things in Action onely, no Action lyeth againſt ſuch ſpeciall Adminiſtrator, but if ſuch ſpeciall Adminiſtrator, or he, which hath a Writ to gather &c. adminiſter of his own wrong, he ſhall be charged as Executor *&c.* 21 H.6. 27. 16 *E.* 4. 1.

If two Adminiſtrators be, and a ſtranger doth adminiſter with them of his wrong, it ſeems an Action doth not lye againſt him as Adminiſtrator, *vide* 11 H.4. 71. 7 H.4. 10. & 50 *E.* 3. 9.

A man makes a Will, and *B.* his executor, and afterwards makes another

ther Will, and *B.* and *C.* his executors, *B.* proves the firſt Will, and the other is not proved, an Action will well lie againſt *B.* alone upon this matter, although *C.* alſo adminiſtreth with him, 2 H.5.8. *executors* 46. But the proving of the later Will afterwards ſhall have Relation to defeat and diſſallow all that which they did by the firſt before, 7 H. 7.13. *Executors* 41.

R. Executor of *B.* makes *T.* his Executor, who adminiſtreth the goods of *B.* Debt lieth againſt him for the goods of *B.* as executor of executor, if he hath not adminiſtred of his wrong in the life of *R.* his Teſtator, 33 *E.*3.17. *Executors* 62. *Vide C. 5. part Reads Caſe acc.*

Debt upon an Obligation lies well againſt an executor, Adminiſtrator or the Ordinary, although none of them be named in it, 45 *E.*3.17. but the Heir ſhall not be bounden if he be not named.

If the Sheriff or his Bailiff upon a *Levari facias* of goods of the dead for the King, levy more then is due, and adminiſter the Surpluſage, they ſhall be chargeable for ſo much, 8 *R.*2. *executors* 122.

The Ordinary may charge the Adminiſtrator for good cauſe, or without cauſe, 34 H.6.14. *a.*

If the Ordinary doth adminiſter, and afterwards doth commit Adminiſtration over, yet an Action lieth againſt him, but it doth not lie againſt him as Ordinary, if he do adminiſter in another Dioceſſe, 12 *R.*2. *Admniſtr.* 21.

Debt well lieth againſt the Ordinary upon an Obligation of the Teſtator, but not for him upon an Obligation, *&c.* 35 *E.* 3. *executors* 105.

VIII. *Where Executors of diverſe perſons ſhall joyn in action, and where an action ſhall be joyntly ſued againſt them, and where Executors, and Executors of Executors ſhall joyn, and an Adminiſtrator of wrong joyn with the Executors.*

DEbt was maintained againſt Executors, and Executors of Executors, for it may be that they have poſſeſſion of all the goods, 15 H.6. *Executors* 12. and therewith agrees 7 *E.*3. ſhewing the one and the other Teſtament, but it ſeems 39 H.6.46. that they ſhall not be joyned, if not that they do adminiſter of their wrong, and then they ſhall be named generally with the others, as joint-executors, ſo it ſeems it ſhall be brought againſt the ſurvivors onely, for if the executors of the Executors do adminiſter with them, Treſpaſſe lieth againſt them, 10 H.6. 26. *Executors* 22. But it is there ſaid, that the Action may be brought againſt the ſurvivor alone, by which it ſeems the Plaintiff is at his election, and ſo it is agreed, 7 *E.*3. & 27 *E.*3:80. by *Wilby*, that he may elect, See 38 E.3.7. by *Thorpe*, *executors* 61. *Scrope* Juſtice ſaid, that the ſurvivor of the executors ſhall have the Action alone, but in an Action againſt the Executors, it behoveth alſo

ſo to name the Executors of the Executors, becauſe they may have the goods, and to that all the Juſtices agreed, *M.* 10 *E.* 2. *Executors* 110. The opinion of the Court agrees of an action againſt them with averment, as *Scrope* alledged, 29 *E.* 3. 10. *Executors* 120.

An action by an Executor, and the Executor of the Executor awarded good, yet the ſurvivor alone might have had it by *Herl*, 18 *E.* 2. *Executors* 115.

If Executors do convert the goods of the dead to his uſe, no action lyeth againſt the Executors, becauſe they have nothing of the Teſtators, 39 *H.* 6. 45. *Executors* 29.

Two Joint-tenants of a Wood, the ſurvivor ſhall have the Action alone, and if Tenants in Common, they ſhall have ſeverall actions, as Executor of each for his part, and it is no plea that the Teſtator made another Executor who is dead, and *B.* his Executor alive, 38 *E.* 3. 7. *Executors* 61. 15 *E.* 3. *Executors* 81. Yet their Teſtators Tenants in Common ought to joyn in an Accompt.

IX. *Where one Executor ſhall have an action againſt his Companion, and where without his Companion, and where one ſhall be ſued onely.*

ONE Executor ſhall not have an Action of Treſpaſſe for carrying away of the goods in the life of the Teſtator, againſt his companion, *T.* 4. *H.* 6. *Executors* 6.

Plo. Com 186. If one Executor hath poſſeſſion of all the goods, the other hath no remedie, and therefore where the Debtor and another are Executors, the other ſhall not have action againſt him, but againſt his Executors he ſhall have by ſome, 8 *E.* 43.

One executor ſhall not have an action without naming the other who hath refuſed &c. for he may yet adminiſter, 41 *E.* 3. 22. 42 *E.* 3. 26. 35 H. 6. 38. 4 E. 3. 43. *Brief* 1712. 9 H. 5. 6. *Executors* 48. and the Releaſe of him who hath refuſed ſhall barre the others, 21 *E.* 4. 14. 15 *E.* 3. *executors* 80. 21 E. 3. 19 E. 3. *Covenant* 24. 48 E. 3. 15. 15 E 3. *executors* 90.

19 *H.* 6. 31. *b.* 6 *E.* 4. 1. 42 *E.* 3. 26. *per Finchden. the differenceis where debt is brought, and where Treſpaſſe for taking goods out of his poſſeſſion*

But it is ſaid, that for goods taken out of his own poſſeſſion, the one ſhall have an Action without naming the other, becauſe he need not there ſhew the Will, nor name himſelf executor, but Treſpaſſe of goods taken in the life of the Teſtator ſhall be brought by them all who may adminiſter &c. 42 E. 3. 26. 6 *E.* 4. 1. 12 *R.* 2. *executors* 75. But it is holden that the one ſhall not have Treſpaſſe againſt the other of his own poſſeſſion, 19 H 6. 5. *executors* 14.

13 *H.* 4. 1. *Accompt* 20. One executor bringeth an accompt againſt his Companion in both their names, and not allowed, for he ſhall be accomptant to the Ordinary onely, 13 E. 3. *executors* 91.

If

If one Executor doth releaſe, the other hath no remedy, but a *Sub pœna*, 4 *H.*7.4. *vide* 6. *H.*4.3. by *Thirning*, if one executor to whom the Ordinary did not deliver Adminiſtration, doth releaſe, the ſame ſhall be an Adminiſtration, and of the Debt releaſed hee ſhall accompt before the Ordinary.

In an action againſt Executors, it is ſufficient to name thoſe who do adminiſter, 16 *H.*7.4. and if they will plead to the Writ, that there is another not named *&c.* it behoveth to alledge in fact, that he hath adminiſtred, 9 *E.*4.12. *Executors* 34.

So it ſeems, the Action doth not lie againſt an Adminiſtrator, if in fact he hath not adminiſtred, 8 H.6 3. But it is holden that an Action ſhall lye againſt all who have Commiſſion to adminiſter, 9 *H.*5.6. *executors* 48. although indeed they do not adminiſter, *vide* 9. *H.*5.7. *In fine*, if Adminiſtration be committed to ten men, debt muſt be brought againſt them all, not ſo of Executors, but againſt thoſe who adminiſter onely.

I need not name him who adminiſtreth of his wrong with the Executors, but the Writ ſhall be well, becauſe he was not made Executor, 33 *H.*6.38.

Debt againſt one as executor, he ſaid, that the Teſtator made him and one *A.* Executors, to whom the Plaintiff had releaſed, it was holden a good Plea, and the Plaintiff ſhall anſwer to that, without abating his Writ, becauſe the Defendant hath not alledged, that *A.* is now alive &c. 22. H.6.59. *Executors* 18.

21 *E.*4.24. 41 *E.*3.22. *C.*3 *part* Henſloes *Caſe acc. Plo.Com.* 135. *and* 281. *in Foxes Caſe. C.*9 *part* 38. Henſloes *Caſe, is is a good plea without ſaying that the Will is pleved. vide* 22.H.6. 25. *Vide* 9 E.4.33. 8 h.6.33. 36 h.6 *if one adminiſter of wrong, and afterwards adminiſtration is committed to him by the Ordinary, he ſhall accompt from the time of the death of the Teſtator.*

X. *Where one ſhall be Executor after refuſal before the Ordinary or diſagreement in Court of Record &c.*

IF all refuſe but one, yet they are Executors at their pleaſures, 9 *H.*6.36. But if all refuſe before the Ordinary, and he commit the Adminiſtration over, they are diſcharged for ever, and ſhall not meddle, 9 *E.*4.33. 36 *H.*6.8.58.3.9.

He who hath adminiſtred as Executor, ſhall never be diſcharged by refuſing after, 9 *E.*4.33. But if in that Caſe the Ordinary commit Adminiſtation over, Debt lyeth againſt him, and it ſhall be no Plea, that the dead made *A.* Executor who adminiſtred, if he do not alſo ſay that he proved the Will, 3 H.7.14. and there it is holden that he dieth inteſtate, but 4 H.7.13. and 10 H.7.9. agree to the Plea, but that he doth not die inteſtate in our Law upon that matter, and the writ which ſuppoſed that he died inteſtated upon ſuch matter was abated, 3 H.4. *Adminiſtr.* 22.

An Executor not knowing it, took Letters of Adminiſtration, and after finding the will proved it, it is good, and he is executor, 9 *E.*4.33.

The Cardinall of *C.* being made executor refuſeth, now he ought to

ſhew that he refuſed before the Ordinary, for his refuſall is void, if it be by word in the Countrey, *M.* 9 *E.* 4. 33 *Executors* 35.

XI. *Where the Executors ought to have the Will and ſhew it, and what ſhall be ſaid a ſufficient Teſtament to maintain an action.*

AN Executor may well maintaine an action ſhewing a nuncupative Will under the Seale of the Ordinary, 4. *H.* 6. 1. *Executors* 3. 19 E 3. *Covenant*, 24. 10. E. 4. 1.

And it ſufficeth if it be ſealed with the little ſeale of the Ordinary and not with the authentick ſeale, for the Court ſhall not enquire of that 4 E. 3. *Executors*, 98. 9 E. 4. 47. 21 E. 4. 50.

And although the name of the Teſtator be raced in the Will, yet it is good, for the Court cannot judge upon the ſufficiency of the Will 22. *H.* 6. 52. *Executors* 17.

C. 5. part Middletons caſe ac. but an Executor may releaſe before probate of the Will.

A Will is not ſufficient to have an action upon it before probate, 7. *H.* 4. 17. *Executors* 107. 21. *H.* 6. 24. 9 E. 4. 47. and yet it is not traverſable if it be proved &c. but the Defendant may well ſay, that he is not Executor &c. 14. *H.* 6. 5. *variance*, 10. one traverſed the Teſtament.

A Will was awarded not ſufficient, where it appeared, the Date of the *Probate* was before the date of the Will, 18 E 2. *Feoffments*, 110.

Excutors ſhall not maintaine an action without ſhewing the Will, and the Writ varying from it, ſhall abate 36. *H.* 6. 16. Briefe, 127. but this ſhewing needeth not, nor variance ſhall not hurt in an action of their owne poſſeſſions 43 E. 3. 31.

In a raviſhment of Ward or *Ejectione firmæ*, of the time of the Teſtator he ought to ſhew the Will, not of his owne time 7. *H.* 4. 2.

Executor of his wrong ſhall not have an action, becauſe he cannot ſhew the Will, 21. *H.* 6. 24. 9 E. 4. 47.

Executors were driven to ſhew the Will in a *Scire facias* upon a Recognizance made to the Teſtator, & after that the Defendant had pleaded another Plea, admitting them perſons able *&c.* and the Plea was, that there was another to be warned, and not allowed, 27. *L.* 3. 80 *Executors* 95.

The Eexecutor of an Executor, if he bring an Action, it behooveth him to ſhew both the Wills, 7. E. 3. 62. *Executors* 97. But they ſhall not be driven to ſhew them but once, and no execution for variance ſhall be allowed afterwards, if it be not entred *Verbatim*, 36. H. 6. 16. 38. *H.* 6. 2. the reaſon is, becauſe they may have an action depending in another Court, where they ought to ſhew the Will, 19. *H.* 6. 7. But an Adminiſtrator ought to ſhew his letters of Adminiſtration at every day, as an obligation ſhall be, 16. *E.* 4. 8. but they are not entred in *hæc verba*, as an obligation is at another day, for if he bring the letters of adminiſtration at another day they are not traverſable, otherwiſe it is of an obligation

tion, and therefore he ſhall nor plead variance after imparlance a t another terme, 36 *H*, 6. *variance* 17.

When Executors, or Adminiſtrators are by way of defence, they ſhall not ſhew any thing, becauſe they are in poſſeſſion, 10. *E*. 4. 1. 21 *E*. 4. 15. 21. *H*. 6. 23. and 16 *E*. 4. 1. but 22 *E*. 4. 10. is holden contrary of Adminiſtrators, but the other bookes held it all one, and there if they plead that they are Adminiſtrators and not Executors, or that that is another Executor not named; they ſhall not ſhew any thing thereof 21. *H*. 6. 23. 16 *E*. 4. 2.

10. *H*. 7. 18 *if one entitle himſelfe, or juſtifie by way of Barr as Executor, there he ſhall ſhew the will, vid*. 7. *H*. 7. 3. 19. *H*. 6. 74. *ac. vid*. 21. *H*. 6. 1. 16 *E*. 4. 2. 21. *H*. 6. 23. *ac*.

In debt by Adminiſtrators they ought, to ſhew where the committing was, for this is traverſable, and not whether they have adminiſtred or not, otherwiſe it is of Executors, and *Danby* conceives that they muſt ſhew where the Teſtator died 35. *H*. 6. *Adminiſtrators* 4.

XII. *What perſon may make an Executor, what not, and of what things, and who ſhall be Executor.*

A Feme covert, by Licenſe of her husband may make an Executor, and may make her husband Executor 4. *H*. 6. 31. *Executors*, 5. 39. *H*. 6. 17. *Executors*, 28. 2. *H*. 7. 23. And ſhe may be Executrix to another by the leave of her husband.

C. 4. *part* Ognells *caſe in fine. ac*.

An Infant within age of 4. yeares may make his Will of Chattels, by *Perkins*, but not of freehold *fo*. 7.

Quære fol E. 3. 44. *by Candiſh, it ſeems, he can doe no legal act before fourteen yeares.*

A Parſon may make a Will, but an *Abbot Deane*, Maſter of an Hoſpitall, Guardian of a houſe &c. not becauſe they have a common ſeale, (this is of things of their houſe) 19. *H*. 6 44. Teſtament 1. but a Biſhop or an Arch-Deacon may well make a will, and therefore their ſucceſſors ſhall not have waſte, for waſte done in their time &c. for they have two capacities, 2. *H* 4. 3. *ac*.

The husband cannot make Executors of an obligation which he hath in the right of his wife, nor of any other thing in Action 7 *H*. 6. 2. againſt 6. *E*. 2 *Executors* 109. But if the Bond be made to both joyntly, he may &c. 16 E. 4. *ac*.

A Feme covert may make Executors of that which ſhe hath, as Executor without the aſſent of her husband, and may deviſe her apparrell by *Fineux* by the ſpirituall law, and by the common law alſo, by the aſſent of her husband, 12. *H* 7. 23. and 24. 18. E. 4. 11.

A man cannot make his Will of things which he hath, but as Executor nor of Chattels which ſhall not be forfeited by out-lawrie in action perſonall, nor which ſhall not be attached in an Aſſize, nor diſtrained by the Lord, as of a furnace fixed, or a Table fixed, nor of Tymber, Pale nor boards fixed to the doore, nor of a Window which is faſtened, but he may well do it of the glaſſe, 8. *H*. 7. 12. 20. *H*. 7. 13. 21. *H*. 7. 27.

It ſeemes that a man out-lawed in a perſonall action cannot make Exe-

Executors, becauſe it is holden a good plea in Debt, upon an Obligation againſt Executors, that their Teſtator dyed outlawed, or villein of the King, but it was holden that the ſame doth amount to as much as if he had no goods, &c. 8 *E.* 4.6. and if it be a plea, the ſame is, becauſe it giveth advantage to the King; but it is no plea, if they have adminiſtred, 3 *H* 6.33.

An Infant may be an Executor, and pay debts, but *Newton* conceives, that an Infant, Monk, or a woman married ſhall not be bound to make an Acquittance, although they may ſue for the debt, 19 *H.*6.25. 2 *H.*7. 15. 18 *Edw.*4.10. A Feme Covert Executrix, ſhall not give away the goods. 18 *H.*6.4. But this is to be meant before Debts and Legacies be payd, *Vi.* 31. *E.* 1. *Executors* 219. And that the Releaſe of the Husband of ſuch a woman is void of the entry of the Teſtator, and therewith agrees, *P* 16 *H.*6. *releaſe* 8. and that the Releaſe of a Feme Covert or Infant is good, and ſhall not be avoided, *Vi.* 16 *H.*7. *Per Curiam.*

A man outlawed maybe an Executor, becauſe to another uſe, and ſo a Monk without the aſſent of his Soveraigne, becauſe it is a ſpirituall thing, 14 *H* 6.14. *Executors* 11. 3 *H.*6.22. and a man outlawed may be an Attorney, or Prochein amy for another, but an Excommengent is a good plea, untill he hath Letters of abſolution, 21 *H.*6. 30. 21 *Ed.*4.13. and 59. and there it is ſaid, that the woman executrix ſhall have an Action without her husband, and a Monk without his Soveraigne, but it ſeems the wife ſhall not have an action withont her husband, 11 H.4. there vouched, and 18 H.6.4. that ſhee ſhall not have it, and 21 H.6.30 agrees to the difference in this point, betwixt a Monk and a Feme Covert, and 22 H.6.4. It is holden, that the Soveraigne ſhall be joyned with the Monk in the Action, be he Plaintiff or Defendant.

Vi. 3 Eliz. Dyer 204. *an idiot cannot make a will,* 1 *contr, of a Lunatick who hath* Lucida intervalla. 5 Eliz. Dyer 219. *A man deviſed, that after the death of his wife, that his land ſhould be ſould by his Executors, with the aſſent of* A. *and made his wife, and a ſtranger his Executors and dyed, the wife dyed,* A. *dyed, the authority is determined,* 2 Eliz. Dyer 177. *vi. Perkins pl.* 550. *acc.*

A Villeine may be an executor, and as executor ſhall have an Action againſt his Lord, 21 *E.*4:59

And Clerk attainted, may be an executor, 22 H:6:31.

XIII. *Where a Gift or Sale by one Executor, is good without his Companion, although ſhee be a Feme Covert, and their Authority.*

And deviſed to executors to be ſold, may be ſold by one of them, 39 *Aſſ* 17. *Executors* 116: and if one executor do refuſe, the other may well ſell upon ſuch a deviſe, ſo it is of goods. Alſo a Sale made by one executor, who refuſeth before the Ordinary is good, if the other prove the Will, &c. and if one ſell to one, and the other to another, the firſt ſale ſhall ſtand, but *Candiſh* ſayd, That the beſt for the Teſtator ſhall be taken, 49 *E.*3:17. *Deviſe* 8:

39 *Aſſ*: 19: If a man deviſe, that his executors ſhall ſell his Lands, if one dyeth, the other cannot ſell, but if a man deviſe his Lands to his executors

cutors to be ſold, and one dyeth, the Survivor may ſell, *vi:* 1 *Eliz: Dyer* 210: and 23 *Dyer* 371: The difference betwixt a bare Authority, and Authority coupled with an Intereſt, *Vi: C: Lit:* 113 and 181: *acc:*

But upon the refuſall of the executors, the Ordinary ſhall not adminiſter, nor ſell, 49 E. 3: 17: and 15 H:7:12: And theſe b oks agree, that the executors have an intereſt in the Land by the deviſe, and not only an authority, &c: and therefore if one dyeth, the other may well ſell.

A Deviſe that the executors ſhall ſell, and if they ſhall make default, that the executors of the executors, and four of the pariſhoners &c. Now the pariſhoners ſhall not intermeddle with the executors, but only with their executors, 49 E:3:7.

If one willeth that his executors ſhall ſell, they may well ſell after refuſall before the Ordinary, becauſe it is not Teſtamentary, and upon a Deviſe that his land ſhall be ſold, without ſaying by whom, it ſhall be ſold by his executors and not the Feoffees in uſe, 15 H:7:12: *Perkins contra*, in the firſt caſe, if they be not named by their proper names in the Will, and contrary alſo in the laſt caſe, if the deviſe be not, that they ſhall ſell for the payment of his debts, *fol:* 15 and 19: H:8:9.

If the Teſtator willeth that his Feoffees ſhall ſell, the Feoffees of the Feoffees ſhall ſell, but not if he will that *A:* and *B:* his Feoffees ſhall ſell, or that his Feoffees aforeſaid, where he names them before; but here *A.* and *B:* may ſell, although they have ſold before, or another by their commandement, 15 H:7:11:

If I will that my Feoffees, ſhall make a leaſe for years and they have aliened the land, their alienee ſhall make the Leaſe, 15 H:7: 12:

A Deviſe that *A* ſhall ſell, ſhall not extend to his heir, nor to the heir of the Survivor of the Feoffees, appointed to ſell, and thoſe that were Juſtices of the Common Pleas at the time of the Deviſe, that they ſhall ſell. They may ſell, but not their Succeſſors, by *Brudenell* 19 H:8:9: and if he willeth that his executors ſhall ſell, their executors thereby ſhall not ſell. *Quere*, *Perkins* ſets down the name of the Juſtices, *fol:* 106: and if the Deviſe was to diſtribute for his ſoule, hee held that the executors of the executors might well ſell, *fol:* 105:

Deviſe that the Abbot of *B:* ſhall ſell, where there is no ſuch Abbot, there ſhall be no ſale, 19 H:8: 10:

A Feme Covert executrix may baile goods to keep without her husband, or pay debts, and have detinue, or account after the death of the husband, 2 H:7: 15. *Executors* 40. But the book at large is, that ſhee ſhall not have an accoont.

The gift of a feme Covert executrix, and for to pray for the ſoule of of the Teſtator, is good, 7 H:4: 13: *Executors* 54.

A Releaſe of one executor, ſhall barr them all, although they have refuſed; &c. 13 *E:*3, *executors* 91. 21 *E*, 4, 9 E. 448 E 3 15.

H. 26. El. in B. R. Vincent and Lees caſe, A man ſeiſed of Lands in Fee, deviſed the ſame in taile, and if the Donee dyed without iſſue, that his lands ſhould be deviſed by his five ſons in Law, the one dyed in the life of the donee, adjuged, that the others might ſell, becauſe named generally, but if they had been named by their particular names, and after the one had dyed, the other could not ſell, and ſo it was adjudged, M. 29 El. B R. in Boneſant, and Sir Richard Greenfeilds caſe Vi. 11. E. 4. 2. Perkins 21. 14 H. 8. 6. C. 5. part Middletons caſe. ac.

XIV. *Where an Executor shall have an action for the goods taken away in the life of the Testator, and what action he shall have.*

EXecutors shall have Ravishment of a ward taken in the life of the Testator, 9 H 4. 11 H. 4. 54. *Executors* 52.

Executors shall have *Ejectione firmæ* of the Testator being Termor or Tenant by *elegit* and ejected, 7 H. 4. 6. *executors* 53.

Executors of the Tenant by Statute Merchant shall have an Assise, 28 *Ass.* 7.

If one be adjudged to account to the Testator, the executor shall have a *Scire facias*, and upon that a *Capias* and *Exigent*, 14 H. 4. 1. *executors* 59. 21 *E.* 3. 32. *executors* 84. &c. they cannot have a *Scire facias*.

Executors of Executors shall not have an action for the Debt of the first Testator, 11 *E.* 3. *executors* 78. against 23 *E.* 3. *executors* 91. where they sued Execution of a Recognisance made to him, and therewith agrees 14 E. 3. *executors* 86.

And they may have an action for an Annuity ended due in the life of the life of the Testator, 10 E. 2. *executors* 110. 19 E 2. *executors* 117. and they may call themselves executors to the first Testator if they will, if no executors of the first Testator be alive, otherwise no action lieth for them. See for this difference, 19 E. 2. *executors* 103. 19 E. 3. *Covenant* 24. of a Statute Merchant 28 E. 3. 92. *executors* 96. 13. E 3. *executors* 92. and 28 E. 3. 92. by *Wilby*.

One hath a Judgement against three executors of their proper goods, and hath a *Scire facias*, and one of them dieth, he may charge the survivors onely, or them with the other executors of the other or with his heir, but if the Judgmeut had been of the goods of the dead, it seems the *Scire facias* shall be against his executors, 23 E. 3. 8.

Accompt is given to Executors by Statute, and therefore Executors of the Executors shall not have it, 7 E. 3. 62. *executors* 97. 13 E. 3. *executors* 92.

If the Debtor of the King be made Executor to another, he shall not have a *Quo minus* in the Exchequer by colour thereof for a Debt due to the Testator, because the King shall not be paid of that which is not his own proper estate, 8 H. 5. 10. *executors* 102.

Executors shall have Trespasse for the Charters belonging to the heir, which are taken out of their possessions, 16 *E.* 2. *executors* 111.

XV. *What goods of the dead the Executors ſhall have, what the Wife, what the Children, and what the Heire.*

THe wife ſhall have her apparrell convenient, but not exceſſive, 33 H. 6.31. 37 H.6. 27. And by the cuſtome, the wife ſhall have the moyety, where the husband hath no iſſue; or if all his children were advanced in his life by him, otherwiſe the third part of the goods, 30 *E.*3.25 *Detinue* 52: *Breife* 305: but this is after Debts and Legacies payd there, and 1 *E.* 2. *Detinue* 56: and there holden. That *Rationabili parte bonorum* lyeth at the Common Law, and 17 *Ed.* 2. *Detinue* 58. which is grounded upon *Magna Charta*, 34 *E.*3. *Detinue* 60.

The wife ſhall not have Dower of the goods of her husband, if it be not by cuſtome, and ſhee ought to ſet forth the ſame in her Count, 7 H.4. So it ſeems all is not for the wife, and alſo for the Infants is not Common Law but only by Cuſtome of the Country, and that is proved by all the Counts in this writ, 7 *E*: 4: 21: 28 H: 6: 5:

The Heir by the Common Law ſhal have nothing of the perſonall things which are not affixed to the freehold, unleſs it be a box ſealed, or a Cheſt locked, with the Charters of the Lands, for then he ſhall alſo have the Box and the Cheſt, but of other goods in them, the executors ſhall have Detinue againſt the heir &c. 3 H 7: 15: *Barr* 128:

31 *E*,3. *ac.* But *ſee* 7 *E.* 4. 20. *Exception was taken, becauſe one did not ſhew that the cuſtome did continue.*

19 *Eliz. in B. R. A writ was brought there and allowed, notwithſtanding exception taken, that it was maintainable by cuſteme, Vi.* 1 *E.* 43. *Billing, acc.* 30 *H.*6. *Reſponâ* 6 95.28. *H*3..4. 40 *E* 3. 38. 39 *E*3.5.

XVI. *Where one ſhall be Executor and Adminiſtrator to one and the ſame perſon, and where one ſhall be Executor of one part, and another of another part.*

IF a man hath goods in diverſe Dioceſſes, hee may make an executor of the goods in one dioceſs, and dye inteſtate of the goods in the other, and if he make his executors generally, they may adminiſter as executors in one dioceſs, and refuſe in the other, and take Letters of Adminiſtration there, 35 H:6:36: ſo it is of Provinces.

If I will that my executors ſhall ſell my Lands, and diſtribute for my Soule, they are executors thereof, and the mony is good aſſets, *Perkins*, and 2 H:4 21: *Executors* 51:

XVII. *Where*

XVII. *Where Executors ſhall have ſeverall pleas, and which ſhall be firſt tried, and whether the one ſhal prejudice the other by his Act, or not.*

DEbt againſt Executors, one pleads *Miſnoſmer*, and the other that he is Adminiſtrator and not Executor, and they ſhall not have both, no more then the Executors ſhould have, two Pleas, 37 *H.*6. 17. but they ſhall have ſeverall Pleas where each Plea goes in Bar, as if one plead fully adminiſtred, and the other not the Deed of the Teſtator, 7 *E.* 4.9. *Executors* 30. and the moſt peremptory Plea ſhall be tried, 21 *H.* 7. 25. to that agrees, 8 *E.*4.24. *executors* 69. where one pleaded a Releaſe, the ſecond pleaded to the Writ, and the third fully adminiſtred, and 41 *E.*3. *executors* 96. one denied the Deed, and the other pleaded fully adminiſtred, and admitted good: But ſee 7 *E.*4. that where one confeſſeth the action, the other cannot plead, not the Deed of the Teſtator, and they cannot ſurrender in Dilatories.

But that he was never Executor pleaded by one, and pleinement adminiſtred by the other, theſe Pleas were tried together, 46 *E.*3. 9. *Executors* 72.

VVhere one pleaded fully adminiſtred, and the other that he had an executor, they were driven for to joyn in Plea, becauſe the one was Dilatory, 7 *H* 4.13 *Executors* 54.

A man recovers his Debt, and hath the party in execution by Exigent, and dieth, now upon the Releaſe of one executor, the party had a *Scire facias* againſt them all, *ad cognoſcendum factum*, and he which made it, made the default, yet the others were eſtopped to gainſay it by *Martin*, yet in an action by Executors, or againſt them generally, if one doth not appear he ſhall be ſevered, and the other ſhall plead, otherwiſe it is in Debt againſt other perſons, 10 *H.*6.2.3. and the releaſe of one executor ſhall bar all the reſt: So the Releaſe of the husband ſhall bind the wife in Debt, 17 E 3.66 *executors* 89.

10 H.6.2,& 3 by Martin.

C.5. part Middletons caſe

By the confeſſion of one executor of the Deed, Judgement ſhall be againſt them all of the goods of the dead, 28 *H.*6.3.7.E.4. 8. *acc.* for if one confeſſeth the action, the other ſhall not plead in bar, but he may plead an Outlawrie of the Plaintiff, or a *Miſnoſmer* of himſelf, and it is there ſaid, that he who recovers upon fully adminiſtred found againſt the Executors may have Debt for the ſame duty, and in that action the executors may deny the Deed, becauſe he could not have both Pleas before, *executors* 30 *Vide* 19 *H.*6. If they have no goods of the Teſtator, then the Judgement ſhall be againſt him that confeſſeth the Deed *de bonis propriis*, and ſo for the damages, 18 *H.*6. *vide br. executors acc.* 18.

ac.

14 H. 12. acc.

One executor cometh at the Diſtreſſe, and denieth the deed which is found againſt him, the Judgement ſhall be againſt all the goods of the dead

dead, and againſthim of his own goods, if &c. 17 *E.* 3. 45. *Executors* 76.

Debt againſt two executors, where one is executor by wrong, and he upon the default of the other confeſſeth the action, the other hath no remedie, but an action of deceit, 9 E.4. 13. *Deceit* 21.

XVIII. *Where Executors ſhall be charged, becauſe they have Aſſets the day of the Writ brought, and where he who firſt ſueth ſhall recover, where not.*

IF Executors being warned appear, they ſhall not ſay generally, that they have nothing in their hands, but that they had nothing the day of the writ brought, or that a ſtranger hath recovered againſt them, and ſued Execution after the writ, but if they do appear upon *Nihil* returned at the *Capias*, they may averre generally, that they had nothing after notice of the ſuit, 22 E 4.39.

Watſon conceived, that Executors might pay Debts in writing before thoſe upon Record accrued in the time of the Teſtator, and not in their time, and therefore in a *Scire facias* upon a Recogniſance, or upon a recovery againſt the Teſtator, that they haue nothing in their hands, the day of the warning given, is a good plea; But 21 E.4. 25. puts the ſame Caſe, and is clear contrary by *Bryan.*

Scire facias, ſicut alias againſt Executors in a Recogniſance, they plead fully adminiſtred the day of the ſecond writ, and at the laſt, iſſue was taken, without ſaying, if they had day from the firſt writ 41 E 3 31. 41 E 3. *executors* 68.

Scire facias upon a Debt recovered againſt the Teſtator, it is a good Plea for the executors that they have nothing &c. the day of the warning, and by their default *Fieri facias* iſſued to enquire accordingly. So payment to another before Garniſhment is no wasting of the goods, 12 *E.* 3. *executors* 73.

Reſummons againſt executors upon the death of the Teſtator (depending a writ of Ward againſt him) that they had nothing in their hands, the day of the writ brought, ſhall be no plea for them, but they had nothing after the death &c. for the reſummons is a continuance of the ſuit, as by Journies accompts, But recovery of a Stranger pendant the writ, ſhall be a good diſcharge, 18 *E.* 3. 4. *Wards* 110.

XIX. *Where the Deviſee ſhall take the goods &c. without delivery of the Executors.*

THirn ſaid, that if one executor taketh the goods deviſed to him, this is an Adminiſtration in Law, but otherwiſe it is if he take them

by the delivery of others, 11 H. 4. 83. *executors* 58.

A Book was deviſed to one of the executors for life, the remainder to a Stranger for life, now after his death the Stranger cannot take the ſame without delivery of the executors which are living, although they have delivered it to the firſt Deviſee: alſo the remainder is good by way of Deviſe, not by gift, 37 H. 6. *Donee* 2.

To whom the Executor ſhall accompt.

IF one executor releaſe a Debt, he ſhall accompt to the Ordinaray, not to the others, ſo if he waſt the goods, the others have no remedy. *Quare* of that, 13. *E* 3. *executors* 91. See *Brief* 937. 19 *E.* 2. and 9 *E.* 4. 47.

XX. *Where the Executors of the King ſhall have his goods, and what goods, and of what things the King may make a Will.*

THe King can deviſe no Land by Will, nor nothing which he hath not in poſſeſſion, by *Forteſcue*, 35 H. 6. *Deviſe* 5. but a Deviſe of goods to the King is good, and he ſhall have debt, *Scire facias* or *Venire facias*, where another perſon is put to ſue to the Church, 40 *Aſſ. Deviſe* 19.

When King *Henry* the fourth died, the opinion was that he might make a Will, and deviſe his proper goods, but not the ancient Jewels of the Realm and Crown, 1 H. 5. *executors* 108.

XXI. *Probate of the Will, and the Intereſt of the executors, before the ſame is proved.*

IF the Executor before Probate command his ſervant to take the goods of the dead, and he after refuſeth, and another is made Adminiſtrator, *Priſot* conceived that the Adminiſtrator ſhould not have Treſpaſſe *&c.* others contrary, 36 H. 6. 8. 20 H. 7. 13. the report is againſt *Priſot*, and ſo is 21 H. 7. 23. in the Argument; and if *J.* command *B.* to take the goods of *T.* and afterwards *J.* be the executor of *T.* *J.* ſhall have a good action of Treſpaſſe againſt *B.* which ſee, 2 H. 7. 14.

XXII. *Where*

XXII. *Where the Ordinary shall sequester the goods, although there are Executors, and where he shall sequester them in another Diocesse.*

IF the Executor doth refuse, the Ordinary may sequester untill they prove the Will; and goods in diverse Counties shall be sequestred by the Arch-bishop, 9 *E.* 4. 33. per curiam, *Executors*, 35. 37 *H.* 6. 27. *Administrators* 7. *vi C.* 5. *part. Princes case, vi.* 22. *Eliz. Vere & Jefferies Case.*

But if the Executor prove the Will, he shall have trespasse against the Committee of the Ordinary, if he hath not refused before, 10 *H.* 7. 18. 1.

Debt against Administrators, it is no Plea that the dead made *B.* Executor who administred without saying that he proved the Will, for if he refuseth upon a Writ from an Ordinary to prove it, the Ordinary may well commit administration and discharge him, by *Townsed*, 3. H. 7. *Administrators* 11. But the opinion of the Court H. 13 H. 4. *Administrators* 22. that the action against an Administrator shall be abated, where there are Executors, although that they have not proved the Will.

Debt against the Ordinary, he saith that he hath committed Administration as Ordinary, it is a good plea & the action shall not be maintained, because that he did administer in another Diocesse, but if he hath administred parcell in his own Diocesse, and afterwards commits administration &c. yet the action lyeth against him, 12 *R.* 2. *Administrators* 21.

But the Ordinary shall not have an action of Debt, and *Thorpe* said that by no law he is compelled to grant Administration over, 35 *E.* 3. *Executors* 105.

Where the dead hath goods in diverse Diocesses, and the Arch-bishop commits administration, and also the Bishop of the Diocesse for the goods there, the Committee of the Arch-bishop shall have an action of trespasse against the other, if he doe intermeddle, 10 H. 7. 18. *C.* 5. *part Princes Case, acc.* for there the Administration doth belong to the Arch-bishop alone, although he hath not in one Diocesse, but to the value of a penny; by the whole Court 37 H. 6. 27. *Administrators*, 7.

XXIII *What actions, and what goods Aministrators shall have, what not, and by what name.*

Plgot conceives that an Administrator shall have trespasse for the goods taken before the Administration committed, for their release before shall barr them after &c. and it is a good barr against them, that before the committing of administration, that the Ordinary did baile him

the goods to rebaile, and that he did it before &c. 18. *H.* 6. *Adminiſtrators*, 2.

If an executor dieth Inteſtate, it ſeemes by the committing of Adminiſtration by the Ordinary, he may adminiſter alſo the goods of the Teſtator. *Danby*, he ſhall Adminiſter but only the goods committed to him, 10 *E.* 1. But the Executor of an Executor ſhall Adminiſter both.

An action brought againſt the m ſhall be onely by the name of Adminiſtrators, 41 *E.* 3. *Adminiſtrators*, 14. 38. *E.* 3. *Adminiſtrator* 13.

XXIV. *Where Adminiſtrators ſhall be charged, and where there ſhall be Adminiſtration of parcel, and their Authority.*

IT ſeemes, the Ordinary may change the Adminiſtration upon cauſe, as that the other will not adminiſter, is gone beyond Sea, is outlawed &c. alſo he may make new adminiſtrators upon condition, as if the other returne, &c. that he ſhall have it againe &c. 34. *H.* 6. adminiſtrators 31.

Mowbray ſaith, that if the Ordinary doth commit parcell of the goods to one to adminiſter, and parcell to another ſeverally, yet an action lyeth againſt them in common *M.* 38 E. 3. Adminiſtrators 13.

Adminiſtration accepted upon condition, and upon cauſe if the other ſhall agree, and upon diſagreement to deliver back the Letters of Adminiſtration, and good, 37. *H.* 6. 28. *Adminiſtrators* 7.

XXV *Where Adminiſtrators ſhall ſhew their Letters of Adminiſtration, and what letters ſhall be ſufficient, and where conditionall, and where he may take them conditionally.*

AN Arch-Deacon did commit Adminiſtration by preſcription, 37. H. 6. Adminiſtrators 7. and the commiting of Adminiſtration by a commiſſary was holden good, 11 H. 4. Adminiſtrators 12.

Of the ſhewing of the letters of Adminiſtration ſee diviſion 11. and of conditionall Adminiſtration, the Diviſion laſt before.

EXTENT.

EXTENT.

I. *The Order of a re-extent, and when it ſhall be of goods aſwel as of Lands, and what things lie in extent.*

A Man recovered damages in Mayheim, and had an Elegit returned &c. at which day the Plantiffe ſhewed that the goods of the Defendant were worth but 10 l. and that they were extended at 20 l. *Spig.* the ſtatute is that the goods praiſed at too high a vallue, ſhall be delivered to the Prizors, but this is upon a Statute Merchant, wherefore we will adviſe &c. 25 *E.* 2. *extent* 2.

The Sheriff upon a recovery in value, delivered more Land then he ought, the Tenant preſently ſhewed that to the Juſtices, and had a Writ to the Sheriff to deliver the Land of the one and the other, and to deliver the Surpluſſage, who returned the recoverer dead, and holden that extent ſhall be without warning the heire or ſucceſſor, becauſe preſently followed within the yeare, yet upon a recoverie againſt the Tenant, execution ſhall not be againſt the heire without a *Scire facias*, by *Herl*, M. 12 E. 3. *extent* 2.

Admeaſurement of Dower, ſuppoſing, that ſhe had more then ſhe ought by 20 l. a yeare, ſhe came and was ready to be admeaſured, and the Sheriff did it by Writ, and returned, that ſhe had but 40. ſhillings above the value, *Thorp*, the admenſurement ſhall be where the plea is, as in admenſurement of paſture, but the Plea may be holden before the Sheriffe, and then he ſhould be judge, but here he ought to returne the extent by parcells, and we ſhall judge of it, and becauſe it was not ſo, a *ſicut alias* was awarded, *P.* 44 E 3. 10. ſee the ſtatute of *Weſtminſter*, 2. *cap.* 8. and *F. N. B.* 148.

Vouchee in a forreign County pleaded and loſt, the tenant ſued to have in value, and upon a Writ to extend the land, returned 40 s. paid, and a Writ iſſued to the Sheriff of the forraigne County to extend Land to the value, who returned that he had done ſo and delivered it, upon which the vouchee had a reextent, becauſe of more value &c. and that returned, that he had made reſtitution of the ſurpluſage, upon which came the tenant and alledged the reſtitution unequall, becauſe he had redelivered more then he ought, and had a re-extent and that without a *ſcire facias*, and the opinion there was, that common doth not lie in extent, M. 22 E. 3. 29.

extent.

extent 19, and ſee that a Wood was extended to have the profit of the herbage by *elegit*, 21 E. 3. 16. *Scire facias* 111.

If in waſte againſt a termor, where a rent is reſerved, the ſame terme be extended for the damages, and the rent is not recooped in the extent, & the Plantiff accept of the extent, he hath no remedy to hold over for the Rent afterwards 44 E. 3. 16. *Scire facias* 88. 44 E. 3. 14. *A man recovered damages in waſte & had an elegit, the party brought a Scire facias to have ſix Acres ley land, and ſhewed that he had received all but ten ſhillings, which he tendred in Court, and prayed* Scire facias, *which was granted, vi.* 47 *E.* 3. 12. *a. ac. and if the party had found the land, yet he could not hold over.*

II. *Where Tenant by extent, ſhall hold it over his Terme*

HEe ſhall be concluded by the generall acceptance of the Extent, but where after the terme, the tenant ſueth a *Scire facias* to have back his land, the Plantiffe may ſay, that he hath not levied his Coſts and charges, and to retaine the Land, 15. H. 7. 16.

It was ſaid that if the land be ſuddenly drowned, or burnt by wild fire, the Connuſee ſhould hold over his terme, 11 H. 4. 7 H. 7. 12. 15. H. 7. 14. but ſee 19 E. 2. *Execution* 146. where the Connuſee prayed to hold over his terme, becauſe the land was deſtroyed by Warre, *vi.* 33 H. 6. 47.

And it is ſaid, if the Plantiffe doth not take the profit during the terme where the houſe is burnt &c. that yet the body is diſcharged at the end of the terme, 15 E. 4. 5.

III. *Where extent ſhall be for the Vouchee for the Land demanded, and where for the Land recovered in value.*

IN Dower, the tenant vouched the heir in a forraigne County, upon whoſe default at the ſummons a Writ iſſued to extend the Land demanded, and afterwards a Writ to the Sheriff of the forraigne County, to ſeiſe into the Kings hands, lands to the value, and to ſummon the vouchee who appeared M. 20 E. 3. *extent* 22 E. 3. 20.

Upon a grand Cape *ad valentiam*, the Land ſhall be alwaies extended 6. E. 2. *Vouchee* 258.

And in the ſame County execution ſhall not bee in value, but a Writ to extend the Land ſhall iſſue forth, and the ſame ſhall be returnd, T. 7. H 6. *extent* 4.

The vouchee had a *Scire facias* becauſe he ſurmiſed, that more land was extended

extended in value then ought to have been, and it was abated, becauſe it was not brought in Town or Hamlet, 22 *E.* 3. 1. *Brief* 378. and with the extent agrees 12 *E.* 3 *extent* 19. But it ſeems the one Land or the other ſhall be extended for the Vouchee, and that he ſhall have the Surpluſage delivered back to him, *M.* 12 *E.* 2 *extent* 6.

It was ſaid, that upon a Recovery in value, the Extent ſhall be according to the value, that it was at the time of the alienation with warranty, not as it is now, if of greater value *&c* H. 6 *E.* 2. *voucher* 258.

In Dower the Heir was vouched in divers Counties, and anſwered, as having nothing by Diſcent, the Demandant did averre that he had Aſſets where the VVrit was brought, and in *S.* for which a Writ iſſued to extend the Land in *Dd.* and alſo a writ to the Sheriff of *S.* and *Nihil* returned, upon which the Demandant prayed Seiſin againſt the Tenant, but he ſaid, that he had Aſſets in *Mid.* where he was alſo vouched, the Demandant ſued forth a Re-extent, the vouchee prayed a Re-extent of the Land in *Dd.* becauſe it was too high, and had it. Afterwards the Tenant did ſurmiſe that Aſſets is deſcended in the County where the writ was brought after the *Nihil* returned, and prayed that the Demandant might have Seiſin againſt the Vouchee in the ſame County, and others, there the Demandant recovered againſt the Tenant preſently, ſo it ſhould be here, but becauſe Judgement is given firſt that he ſhall recover againſt the heir, if he hath, otherwiſe againſt the Tenant, that Land which came to the heir afterwards, is chargeable, *P.* 16 *E.* 3. *Voucher* 85.

IV. *When and within what time he muſt pray a Re-extent who will have it, and where no re-extent ſhall be.*

IN Dower upon Voucher in a Forrein County, the Land in the one County and the other was extended, and the value ſeiſed into the hand of the King; now came the Vouchee and ſhewed, that his Land was extended but at 15 l. whereas it was worth 50 l. and had a Re-extent, although the firſt was entred upon Record, and that he ſhould have come when the extent was returned, 20 *E.* 3. *Extent* 1. and ſo if he ſue a Re-extent preſently within the year, that he ſhall have it againſt the heir or Succeſſor, without a *Scire facias*, *M.* 12 *E.* 2. *Extent* 6. and yet there he had ſued a writ of extent before, returned *tardè*, but if he had not ſued preſently, he ſhould not have had a Re-extent without a *Scire facias*.

A Re-extent is grantable in the Kings Bench, as well to the Defendant as to the Plaintiff, but he ought to come at the day of the extent returned, for afterwards he hath no remedy. *Quære* if the Caſe were upon damage recovered, 22 *Aſſ.* 44. *Extent* 2. and upon an *Elegit* a Re-extent may be for the Defendant, 15 *E.* 3. *Scire facias* 16.

But

But upon Recoverie of a Statute Staple, or Merchant, upon an Extent too low, the Defendant ſhall not have a Re-extent, but ſhall tender the money in Court, and upon an Extent too high, the Plaintiff ſhall not have a Re-extent, but the Land ſhall be delivered to the extendors, who ſhall preſently anſwer the debt, *M.* 15. *H.*7.15. But this prayer of the Plaintiff ought to be the ſame day that ſuch high extent is returned in Court, otherwiſe he ſhall not be helped, 44 *E.*3.2. *Extent* 11. It was ſaid, that for the Conuſee of a Statute Merchant, a Re-extent lyeth at the ſame day of the return, not after, but for the Conuſor no Re-extent *&c* but he ought to pay the money, 19 *E.*3. *Extent* 12.

Upon a Recovery in value, the Sheriff returned the extent of the Land, the Vouchee prayed it might be entred; for the Demandant ſhall recover againſt the Tenant, and he over *ſalvo* to the vouchee his advantages, if after he would challenge them, and then he ſhall have extent, and if it be found more then it was before, the ſame ſhall be recooped, and this Re-extent ſhall be made in the preſence of the parties, and if the Land be in one County, he ſhall have an extent in the *Habere facias ad Valentiam. T.*7 *H.*6. *Extent* 4

Upon voucher in a forrein County, the Land ſhall be firſt extended where the writ is *&c.* and then the Land in value; and upon that the Vouchee comes time enough to have a re-extent, *M.* 22 *E.* 3. *Extent* 19.

Upon default of the Vouchee in dower, a grand Cape *ad Valentiam* iſſued returnable with the extent, the Voucher came and counterpleaded the Warranty, and adjudged againſt him, and now he ſaid, that the Land is extended too high, and prayeth a re-extent, and by *Berry* he ſhall not have it, becauſe he did not pray it at the firſt day when he did counterplead the warranty: But ſee the Judgment upon it was that he ſhould warrant the Land, and that the other ſhould recover, wherefore. *Quare*, of his prayer, *H.*6. *E.*2. *voucher* 258.

V. Where the Land ſhall be delivered to the extendors, where not, and how they ſhall pay the debt.

IT was doubted, 15 *E.*3. if goods extended too high upon *Elegit* ſhould be delivered to the appriſors; for it ſeemed, this is onely upon a Statute Merchant, and there it ſhall be done at the day of the extent returned onely, 44 *E.*3.2. *extent* 11. and upon damages recovered, it ſeems, that he ſhall have a re-extent, and no delivery ſhall be to the extendors, 22 *Aſſ.*44.

Note, if the Conuſee of a Statute prayeth deliverie of the extent too high to the appriſors, it was holden that they ſhall have the ſame
21 *E.*3. 26. *acc.* dayes for payment, as the Conuſor had, and ſhall not pay the money preſently,

ſently, for the Statute is, that they ſhall anſwer preſently, not that they ſhall pay &c. and ſo it hath been uſed, *P. 2. H* 4. 17. *t xtent* 10.

It was doubted whether Lands extended upon a Statute Merchant ſhould be delivered to the extendors, becauſe the Statute of *Acton Burnel*, ſpeaks of goods and burgage that ſhall be delivered as Chattels, and not of Lands, but by Statute after. But afterwards the Land was delivered to extendors for the ſame Term which the Conuſee had, 21 E. 3 21. *extent* 14. 40 E. 3. 16.

VI. *Where a Re-extent ſhall be granted to the Demandant, or Tenant, where not, and where for one Parcener, where not.*

IF a Leaſe for years, whereof I have a Rent reſerved, be extended for me upon *Elegit*, not recooping the rent, I may ſhew the ſame at the day, and as it ſeems, I ſhall have a re-extent, 44 *E.* 3 2.

Land of the Leſſee was extended for damages recovered iu Waſt and he ſaid it was too low, and had a Re-extent. *Quare*, for ſo he might have infinite, 21 *E.* 3. *extent* 3. to agreeth it, although he might have back his Land upon payment, as well upon the *Elegit* as upon a Statute Merchant, 31 *E.* 3. *extent* 13. and upon an *Elegit* upon Recogniſance, the Defendant had a Re-extent, and good without a *Scire faias*, 15 *E.* 2. *Extent* 17.

In Dower the Land of the Tenant was extended too low, ſo as ſhe had not ſo much in value *&c.* upon which he had a Re-extent, yet it was ſaid, that it was her own ſuit, 19 *E.* 2 *extent* 8.

Upon a Statute Merchant, no extent for the Defendant, 19 *E.* 3. *extent* 12. and after extent upon *Elegit* made and delivered, the Defendant ſhewed part of the money in Court, and as to the remnant ſaid, that the Land was not well extended, and prayed a re-extent, and a writ to warn the Plaintiff to anſwer, and he could not have it, without ſuing an *Andita querela*, 13 *E.* 3. *extent* 16.

One ſiſter of full age ſueth Livery by extent, the other then cometh of age, ſhe may have a Re-extent if ſhe will, 2 *E.* 3. 20. *extent* 5. and Livery 8. the ſame book, if the Partition were unequall.

If two ſue execution of a Statute Merchant, and one prayeth an extent in one County, and the other in another, they ſhall not have Re-extent, 11 *E.* 4. 9. *Extent* 9. 4 *Chock.*

Where one ſhall be put to a Scire facias *to have an Extent.*

SEe 15 E.2. *Scire facias* 115. that upon *elegit* it is at his Election, but it is good, although it be upon ſuggeſtion, and good upon a Recovery in value, without *Scire facias*, 12 E.2.

One Parcener at full age, hath Livery by Extent, the other cometh of age and hath a *Scire facias* to extend, the Defendant is by Protection, yet a writ iſſued to the Sheriff, to extend the Land, and being found inequal, a writ iſſued to warn the other Siſter, who challenged the Re-extent made, ſhe not being warned, and without her preſence, for which cauſe the Land was re-extended again, 2 E.3.20. *Livery* 8.

Where Extent ſhall be after Re-extent.

UPon Voucher for the Tenant, *vide Diviſion* 6. 19 *E.2.* and *Diviſion* 1. Re-extent for his Vouchee, and afterwards an Extent for the Tenant, 22 *E.3.* The Demandant had a re-extent, becauſe the firſt was not ſerved, and the Vouchee had a Re-extent, becauſe it was not equall, 16 *E.3. Voucher* 35.

Where Extent ſhall be granted to him who is a ſtranger to the Record.

VPon a Recovery in value againſt two, the Sheriff delivered all the Land of one, in the hands of the Feoffee, he hath no remedy, becauſe he is a ſtranger, *H.*12 *E.3. extent* 15. and the Feoffee of the Conuſor of a Statute, had not a Re-extent upon the firſt found too low, becauſe upon the money paid he might have his Land, 2. *Vide E.3. extent* 18. See contrary, 43 *Aſſ.* 18. but agreeing to 20 E.3. is 17 E.3.36. *Suggeſtion* 15, and the reaſon, is becauſe he is no party *&c.*

Falſifying

Falſifying of

RECOVERIE.

1. *Where the Demandant ſhall falſifie a Recovery had againſt the Tenant, hanging the Writ in the Title, and where by Covin, and where he ſhall ſhew the cauſe of the covin.*

IN a *Pracipe*, the parties were at iſſue and now the tenant ſaith, that after the decree in continuance, a ſtranger hath recovered the land againſt him in an Aſſiſe, where he pleaded in Bar, & traverſed the Title of the plaintiff, which was found againſt him, & demanded Judgment of the writ, the Demandant ſaith, that the ſame was by Covin, with that, that he will averre that the Tenant did not diſſeiſe the plaintiff in the aſſiſe. *Babbington*, he ſhall not falſifie in the ſame point tried, when it goes but to the writ, but if it were pleaded in Bar of the action, he might well falſifie in the ſame point, being a ſtranger to the recovery. *Martin*, if a man recover upon a falſe Title, he who is a ſtranger may well take Title upon the ſame matter, but not where he recovers upon a good Title, nor there by Covin, if he do not ſhew the cauſe of the Covin, 14 *H.*8.4.7 *H.*4.15 *acc.*

But a Recoverie by default, confeſſion or not pleading ſhall be avoided by Covin generally alledged by a ſtranger to the ſame &c. for he may ſhew what matter the Tenant might have pleaded, or traverſed the Title of him who recovered &c. *M.*9 *H.*6 41. *Fauxifier Recovery* 5 *vide* 16 E.3. *Fauxifier* 34. where the writ was abated upon ſuch Recovery pleaded: notwithſtanding covin alledged by the Demandant, becauſe he would not ſhew the cauſe of the Covin &c.

In a Formedon, the Tenant vouched *R.* who vouched *S.* who appeared &c. and *R.* (*relicta vocatione ſua*) ſaid that a ſtranger had recovered againſt the Tenant in a Formedon by action tried, and had ſued Execution, and demanded Judgement of the Writ, and the opinion was, that the writ ſhould abate, although he did alledge the Recovery to be by covin, and ſhewed for cauſe, that the Tenant might have pleaded otherwiſe, and that he alſo yet takes the profits, if not that he will ſay that the Tenant doth continue his Eſtate, without that that the ſtranger did ſue Execution, *P.*41 E.3.11. *Fauxifier* 30

See there by *Finchden*, that a Recovery by action tried, shall never be intended by covin, without shewing the speciall matter, See thereof, 17 *E* 3.72. 15 E 4.4. and 10 *H*.7.

A Recovery by a writ of a later date by reddition *&c.* shall not abate my writ, if the Title be not apparant, as if the wife of the Ancestor recover in Dower against the Heir, against whom I have a Formedon depending for the third part, the writ shall abate, but good for the two parts, and he may averre that she had not Right of Dower to maintain the whole, and recovery by a later Writ by action tried mean shall abate my Writ: See the book, for it is a good Case, 20 E. 3. *Brief* 687.

But a recovery meane by confession, if it were in a Writ of an Elder Date, doth imply any Covin, and therefore the demandant ought to traverse the title &c. or shew speciall cause of the Covin, &c. 9 H. 6. 42. 45 *E*. 3. *Briefe* 589.

In a Formedon the Plea did remaine, for the nonage of the Vouchee, and at the re-summons the tenant said, that after the last continuance, &c. a stranger had recovered against him in a formedon by confession, whose Estate he had &c, and it was agreed no Plea to the Writ, but a good barre presently of the title of the stranger, for he said that the title of the demandant was meane between the recovery and the title of the stranger, and *Brian* said, that by the confession appeareth Covin, 5 H. 7. 39. 40 E. 3. *acc.*

In a formedon the Tenant did plead recovery, meane by tryal in Dower of a later date, the demandant said, that before &c that the tenant had rendred the same land to the wife for her Dower &c. and that the Action was brought by Covin &c. and upon the first render confessed; the Writ was awarded good, *M*. 7 *E*. 3 60. *Briefe* 443.

A recoverie by a latter Writ by confession &c. although it be by good title, shall not abate my Writ brought before 7 H. 4. 15. otherwise it is of an action tried or of an eigne Writ and good title, 45 *E*. 3 *Brief* 589. 28 *E*. 3. *Briefe*, 428, 10 H 7. 1.

If tenant in taile doth discontinue, and the discontinuee is disseised, and the issue in tail bringeth formedon, dependant with the discontinuee doth recover in an Assize of an elder date &c. by that the formedon shall abate, yet he hath a good title: but he who pretends the recoverie to the Writ needeth not to aver the title of him who recovered by Writ of an elder Date. Also if the issue in taile do cause by Covin the estranger to disseise the discontinuee, to the intent that he may recover against him in a formedon, and he doth so, the discontinuee by that matter shall falsifie that recovery in an Assise, whether it be of a later or an elder date, 10 H. 7. 2.

It was found by Office that the tenant of the King died, his heire within age, who entred and was ousted by H. by Covin of B. who recovered against H. &c. although that B. hath a good title and recover by triall: yet awarded the same should abate by reason of the Covin, and the King should

ſhould be anſwered, the profits &c. 41. *Aſſiſe*. 28. *Fauxifier*, 4 *ſee. acc.* 44 *E*. 3. 46. *Fauxifier*, 19 and ſee 11 *E*. 4. 2. and 15 *E*. 4 4. but ſee there, that the cauſing of him who hath right or title to enter, ſhall never be ſaid Covin, as a woman who hath title of Dower, cauſeth the heir to enter upon the diſſeiſor, or the iſſue in taile to enter upon the diſcontinuee, for a condition broken. *See theſe Caſes*, 19 H. 8. 5.

As it is ſaid before Sect 10. that the diſcontinuee ſhall falſifie a recovery of the iſſue in taile againſt him which diſſeiſed him by Covin, ſo it is, if the iſſue himſelfe diſſeiſe the diſcontinuee, and pendant his Aſſiſe, he is ouſted by a ſtranger, by his Covin againſt whom he recovers in a formedon, &c. 25. *Aſſiſe* 1. 7 E. 4. 19. 22. *Aſſ*. 92.

Tenant for life by Covin cauſeth his ſon to bring *conſimili caſu* againſt him, and confeſſeth the action, this is a forfeiture of his eſtate 5 *E*. 3. *Entry congeable*. 42.

The Vouchee did alledge that he did recover in *dum fuit infra etatem* againſt the tenant, and the title of the Plantiffe was meane &c. and the recovery by tryall and depending this Writ now &c. and did not maintaine the title of his recovery; for which the demandant did falſifie the recovery, ſhewing that the vouchee afterwards being of full age, did enfeoff the tenant &c. 30. *Aſſ*. 1. *Fauxifier* 3

Recovery of a ſtranger in an Aſſiſe of a late date, it is no Plea without maintaining the title of the recovery againſt me &c. for it is but as an alienation, 9 E. 3. 12. *Brief*, 455. agrees, upon recovery meane by confeſſion, 10 E. 3. 4. *Briefe*, 689 and ſo may the tenant by his folly be charged with damages in both actions, *ibidem* and 31 *E*. 3. *Brieff*, 343.

And if this ſtranger be put out after he hath recovered, he ſhall have an Aſſiſe if he had entred before my judgement, otherwiſe not without averring his title, 10 *E*. 3. 4. 7 H. 6. 18. by *Newton*, but if a ſtranger doe enter depending my Writ, &c. he ſhall not have an Aſſiſe againſt me putting him out by judgement, nor ſhall falſifie my recovery without proving a better title to himſelfe 9 *E*. 3. 12. and it is all one for recovery depending the ſame Writ, and entry depending it, if he have an eigne title 7 H. 6. 18. 42. *Aſſ*. 3.

So recoverie by default confeſſion reddition by a late Writ is by an alienation, if he have not right, and if ſo, then a naked entry will help him, and the right title ought to be averred as before, 5 H. 7. 40. 10 H. 7. 1 5. *E*. 4 5. 15 E. 4. 4 and 3 *H*. 6. 34. but it is there holden, that the diſſeiſee by his entry, pendant the Writ, ſhall not falſifie in a *Scire facias*, without making title; no more then if he enter after judgement, alſo *Martin* thinks that he ſhall not falſifie in a *Scire facias*, but being a ſtranger ſhall have an Aſſiſe, and there ſhall falſifie; *Scire facire* 24.

II. *When*

II. *Where a ſtranger to a Recovery ſhall falſifie in a point tryed, and in another matter at his pleaſure, which is to the Title, and in what actions.*

IF the Tenant plead recocovery mean by a ſtranger againſt him in an aſſiſe the demandant may well ſay that the tenant now did not diſſeiſe the Plantiff in the Aſſiſe, 9 H. 6. 41 *Dyer* & *Brown* agreed the ſame, 8 *Eliz.* Alſo I ſhall ſay that the tenant might have barred him of the Aſſiſe by another Plea.

A woman to ſave her Dower, ſhall falſifie a recoverie had againſt her husband, by ſaying, that he might have pleaded another Plea; but not denying the point tryed, 36 H. 6. *Fauxifier* 27. And this is by the Statute of *Weſtminſter* 2. *cap.* 4. yet the Statute ſpeaks only of default and reddition, But *Fort* ſayd, it ſufficeth if the Husband hath a better Right, ſee of this, 47 E. 3. 13. *Fauxifier* 31.

In a *Scire facias* upon a Recovery in a *Contra formam*, Collations againſt an abbot brought by a ſtranger, he may well Falſifie in the ſame point tried, 23 E. 3. *Contra formam, Collations* 3.

He who is party or privy, ſhall not falſifie directly in the point tried, but hee may do it when he confeſſeth it and avoydeth it, as where a diſſeiſin was found, he may well ſay, that the ſame was not before ſuch a Fine, &c. or that the ſame was not after the death of R. &c. 10 E. 3. 13. Eſtoppell 151 and 145. and it is there ſayd, that he in the Remainder, ſhall falſifie in the point tried, becauſe he cannot have an attaint &c.

In an aſſiſe, the Seiſin and diſſeiſin was found for the Plaintiff, who brought a *ſcire facias* againſt a ſtranger, he ſayd, That he againſt whom &c. had never any thing in the Land, but one *A.* was ſeiſed whoſe Eſtate he hath, and it was not allowed, *Quare*, for it ſeems a good plea for a ſtranger, 31 E. 3. *Eſtoppel* 241. *Fitzh.* thinks it hard that he ſhould eſtopped, See 36 *H.* 6. 13.

III. *Where the Succeſſor of a Parſon, Vicar, &c ſhall falſifie a Recovery by Reddition, action tryed, or otherwiſe, where and how in a* Scire facias, *againſt them, and in other actions againſt them.*

IN an annuity againſt a Parſon, the Plaintiff claimed by preſcription, the Parſon prayed in ayde of the Patron and Ordinary, had ayde, and upon their default, he confeſſed the action, the ſame ſhall bind the Succeſſor and he ſhall not traverſe the preſcription in a *Scire facias*, againſt him, 9 *H.* 6. 2. 34 *H.* 6. 2. 12 *H.* 8. 8. & 4 *H.* 7. 2. *Fauxifier* 24. 22 *H.* 6. 28. 29 *E.* 3. 34. Otherwiſe it is where he confeſſeth the action without ayde proper, 16 *H* 7 7.

Ceſſavit

Ceſſavit againſt a Parſon, who confeſſed the Action, his Succeſſor in a *Scire facias* ſhall not falſifie this, to traverſe the ſeiſin *&c.* but he is put to his *Juris utrum*, *M.* 10 *H.*6. 5. 22 *H.*6. 28. *Plow. Com.* 291. *vi.* 10 *Ed.*4. 16. *Fauxfier*, 18. *and* 19 *H.*6. 39. *Fauxifier* 14 agree, where the Recovery againſt the Predeceſſor was by Action tryed.

But it ſeems he may well Fauxifier in a *Scire facias* againſt him in the ſame point tryed, becauſe hee is privy and may have an attaint; not when the Jurors are dead, ſo as he cannot have attaint; 10 *E.*4 16. 19 *H.*6. 39. 13 *E.*4. 3. but he may well falſifie, by ſaying, that the Plaintiff had releaſed before, *&c.* or that he hath broken the Condition, upon which *&c.* 10 E 4. 17. *Fauxifier* 18.

The Succeſſor of the Parſon againſt whom &c. ſhall not falſifie, becauſe that the Parſon was dead at the time *&c.* in a *Scire facias* for this is error, 29 E. 3. 34. *Scire facias* 152, 6 E. 3. 27.

The Succeſſor may well ſay againſt a Recovery, againſt the Parſon, by Action tryed, that hee was not parſon at the time, or that he was profeſſed at the time, or that he miſ-named, 34 H. 6. 2. 21. E. 4. 8. 12 *Id.* 4. 15.

If a Recovery be had againſt a Parſon in a *Juris utrum*, the Succeſſor ſhall be bound for ever, although it be by default or reddition, and without Aide-prayer of the Patron and Ordinary, 7 E. 2 *Fauxifier* 11. but a Succeſſor in a *Juris utrum*, may well falſifie a Recovery againſt his Predeceſſor in a Writ of Right, by *Herle*, 8 E. 3. 29. and this is the reaſon, for if the Tenant in a Writ of Right loſeth by default, without joyning of the Miſe, hee may well falſifie the ſame in another, Writ of Right by *Keble*, 7 *H.*7. 11.

A Parſon in a Writ of Right may well joyne the Miſe, confeſſe the Action, or render the Land, and the ſame ſhall bind his Succeſſors for ever, 29 E. 3. 34. *Scire facias* 152. But ſee there, that he ſhall not falſifie, for this, that his Predeceſſor was dead at the time of the Judgement, for this is but error.

IV. *Where the Succeſſor of an Abbot, or Dean, &c. ſhall falſifie a Recovery had againſt the Predeceſſor by Confeſſion, or otherwiſe, where in a* Scire facias, *or in other Action, and in what Point.*

AN Abbot ſhall not falſifie a Recovery of an Annuity had againſt his Predeceſſor by Confeſſion, as to ſay, that he might have pleaded a releaſe, *&c.* for he is as Tenant of the Land, 20 H. 6. 45. 9 H. 6. 3.

So if he acknowledge an Obligation, 10 E. 4. 18. So if he confeſſe the Action in *Ceſſavit*, 20 H. 6. 46. But *Strange* ſayd, If the Abbot loſe in a *Precipe quod reddat*, without cauſe, the Succeſſor ſhall falſifie it in a Writ of

of right, 9 H.6.3. and therewith agrees, 7 *R.2 Abbot* 7.

And in the first case, if the Annuity were of the grant of the same Predeceſſor, the Succeſſor ſhall falſifie the recovery, 12 H.4.12. if he hath not *Quid pro quo*, as Title for Annuity. &c 39 Ed. 3.17. *Fauxifier* 28. *T.* 11 H.4. 67 upon debate of Tythes. 39 *Ed.* 3. The Succeſſor bound by Compoſition or Titles for Annuity, to which the Defendant only was party, and the Succeſſor could not have a Writ of right, yet the recovery was by action tryed, and not in the Right, *&c.* 38 *E* 3.22. *Aide of the King* 50.

If an Abbot be vouched, and confeſſeth the Deed of the Abbot and Covent, the Succeſſor ſhall be bound, although this be falſe, for the Abbot &c. being brought to anſwer in Court, ſhall bind the houſe by his own confeſſion, although not by his deed, 34 *Aſſ.* 7. *error* 81 and it is ſayd, 9 H.6.3. That it is the folly of the Covent to chooſe ſuch an Abbot, or Dean *&c.* See 20 H 6. *Abbot* 22.

Culpepper ſaith, That the Succeſſor ſhall not be bound by the confeſſion of the Predeceſſor of a Deed, as the Deed of the Abbot and Covent, where it was only the Deed of the Abbot, becauſe it was never good, 12 H.4.12.

If an Abbot looſe in a *Precipe quod reddat*, by action tryed, the Succeſſor may well falſifie in any other matter collatterall, *Per Curiam*, *P.* 32 *E.* 3. *Fauxifier* 8.

V. *Where the Iſſue in Tayle ſhall falſifie a Recovery againſt the Anceſtor in a* Scire facias *againſt him, and where he ſhalbe put to his* Formedon, *and where hee may enter, and in what point he ſhall falſifie, and by what Pleas.*

THe iſſue in tail ſhall alwayes falſifie a Recovery had againſt his Anceſtor in a *Scire facias* againſt himſelf, if the recovery were not by Action tryed, 12 *E.*4. 19 *and* 20.

Yet *Martin* ſayd, That the recovery doth diſprove the poſſeſſion, and that the iſſue ſhall be put to his Formedon, 10 H.6.5. *Fauxifier* 13.

4 H.7.3. But ſee 10 H.6.5. The iſſue in taile ſhall not falſifie a recovery againſt his Father, in a *Scire facias*. becauſe the recovery doth diſprove the right.

But by the *Scire facias*, the iſſue hath day to anſwer, ſo he ſhall falſifie there, as he in the reverſion ſhall falſifie a recovery againſt Tenant for life, in his *Terminum qui præteriit*, becauſe that that is his proper Action, 34 *Hen.* 6. 2. *Priſot* agrees there, *fol.* 3. if the recovery be not by Action tryed, *vi.* 37 H.6.32. 7 H.4.17.

If the Iſſue in taile enter after the death of his Anceſtor, before execution, if hee who recovereth by default, put him out, he ſhall falſifie the ſame

ſame recovery in an Aſſiſe, 28 *Aſſiſe* 32. See *Littleton Remitter*, how the iſſue ſhall falſifie a recovery executed againſt his Father, and that if the Father afterwards diſſeiſe the Recoveror, and dyeth ſeiſed, the iſſue is remitted. *Quere* if it be a difference, of a Diſcent before execution when the recovery remaines executory.

If a Recovery be had againſt Tenant in taile by triall, and the Jury find, *Ne Donne pas*, the iſſue is barred, and hath no remedy, but Attaint; *contra*, if it be by default, or for other matter which goes not to the gift, there he ſhall falſifie, 34 *H.*6.13. *acc.*

Forteſcue ſaith, That the younger Son ſhall falſifie a recovery had againſt his Father, of Land in Burrough Engliſh, in the ſame point tryed, becauſe he ought to have the Land, and he cannot have an Attaint, 22 *H.*6 28.

The iſſue in Taile ſhall not falſifie a recovery had againſt his Father in the ſame point tryed in a *Formedon*, nor in no action, but in Attaint, 19 *H.*6.4. and therewith agrees, 15 *E.*3. *Age.* 95. where he, who claimeth as heir of him in the reverſion, whereas hee was generall heir of the Tenant in taile, againſt whom, *&c*, could not falſifie the tryall, as to maintain the gift, where it was found, *Ne donne pas*, in a *Scire facias* againſt him, but ſhall have an Attaint, or a Writ of right.

If Tenant in taile loſe in a Writ of Right, and recover in value, or he hath aliened and taken back in fee, before the Writ brought againſt him, and dyeth, it ſeems that the iſſue ſhall falſifie, for that he was not ſeiſed by force of the taile at the time, and ſo to ſay, that he had nothing at the time, *&c.* 12 *E.*4.14.

Tenant in taile alieneth, and takes back in ſpeciall taile, the wife dyeth without iſſue, the Tenant in taile impleaded, voucheth one who entreth into the Warranty, and afterwards makes default, upon which the Demandant doth recover, and Tenant in taile over in value, and dyeth before execution; the heir of the Recoveree doth enter upon the heir of the iſſue in generall tail, who re-enters; and good, by *Litt.* becauſe the recovery was not by action tryed. Alſo he was not Tenant in taile, at the time, alſo this recovery in value ſhall not helpe the Iſſue, becauſe the anceſtor was not in of the generall tail at the time, and all this was agreed: But if the recovery had been by action tryed, the ſame had remained alwayes executory againſt all the iſſues, *&c.* *M.*12. *E.*4.19. *Fauxifier* 20. and although the ſame recovery was in a Writ of right, the iſſue in taile might well falſifie the ſame in a Formedon, becauſe the Anceſtor was ſeiſed of another taile at the time, 13 *E.*4.1. *Fauxifier* 21.

The iſſue in taile could not falſifie a Tryall betwixt his Father and his Villaine, who was found Franke in the ſame point, although that all the Jurors were dead, ſo that he could not have an attaint, by all the Juſtices, but he might confeſſe and avoid, as, that he was frank at the time by the Manumiſſion of the ſame Tenant in tail, by *Lit.* 13 *E.*4.3. *Fauxifier* 22.

The iſſue in Taile ſhall falſifie a recovery againſt his Anceſtor, in all

point, if not in the same point tryed before, 4 *H.*3. *Fauxifier* 24

See 19 *R.* 2. *Fauxifier* 46. Where it seemes by the Argument, that the Issue should falsifie in the same point tryed, where the Jurors were dead, *&c.* in a *Formedon*, ; for the Tenant did aver the life of some of them, *&c.* *Vi.* 13 *E.*4.3. *contra* by all the Justices.

VI. *Where he who hath an Estate, or Title meane, between the Title of him who recovereth, and the Writ shall falsifie, where not, and where he who hath Title between the Writ and the Recovery, how, and by what Pleas, and where in Dilatories.*

Fortescue sayth, If the Tenant plead a Recovery against a stranger, and that the Title of the Demandant is mean between the Title of that Tenant and the Writ, yet he may well falsifie in a collaterall matter, as to say, that he against whom, *&c.* might have pleaded a release, or to say, that the Tenant dyed pendent the Writ, that the Tenant was nonsuit, or that the Tenant had nothing, or that the Land is in another County, and all the matters proving the recovery void; but that stranger who hath Title mean between the Writ and the Recovery, shall not falsifie by no plea, but by those which prove the recovery void, and which the Tenant himself might have pleaded, and were in the point tryed, but neither the one nor the other shall not falsifie in Dilatories, as by taking husband, Entry hanging the Writ, Outlawry, Excomengent, Ancient Demesne, or that the Land is within the five Ports; for these do not disprove the Title, 36 *H.*6.23 *Fauxifier* 15

But contrary in this, That a stranger who hath an Estate meane shall falsifie, by Misnosmer, or Joyntenancy, or Coverture, and Error in fact, death of the Tenant, that he may well falsifie in cheif: But Error upon record, none shall plead but only the party or his heirs, *T.*9.*E.*4.12. *and* 13. *Fauxifier* 17. and that hee shall say, that he who recovered had a Coheir or Co-Executor not named, *&c.*

Entry mis-supposed by Writ, is no cause of falsifying, 36 *H.*6.33. Yet *Ed.*3.10. That a stranger shall falsifie a recovery in *Terminum qui præterijt*, of a Lease to *A.B.* as to say, that the Lease was to *B.D.*

In a *Formedon*, the Tenant pleaded a recovery in a *Formedon*, against a stranger, and the Title of the Demandant mean between the gift and the recovery, yet he may well falsifie, as to say, That that Tenant did disseise him, and enfeoffed him, against whom he recovered, hanging this Writ, or before it, for no Remitter, until that seisin which hee hath by Discent, be lawfully defeated, *M.*7.*E.*4.19. *Fauxifier* 16. 25 *Ass.* 1.

A Recovery *Prima facie*, doth destroy all titles, and *Herle* saith, that a title mean shal never traverse a point tryed, but may well make a title before,

fore, or aver, that he againſt whom *&c.* had nothing, and a Title before ought to be after memory, alſo it ſeemes by *Herle*, that that ſhall not be before the Title which he hath made by his Writ, if he be Plaintiff, 5 *E.*3,5. *Fauxifier* 1. It was a Recovery in a Writ of Right.

If the eldeſt brother entreth after the death of the Anceſtor, and enfeoffeth a ſtranger, and dyeth; and the youngeſt ſon brings Mortdanceſtor of the ſeiſin of the common Anceſtor, and recovers upon the points of the Writ found, now the iſſue in taile or any ſtranger who hath Title mean, ſhall falſifie, as to ſay, That the eldeſt ſon entred &c. and aliened &c for that matter proves that he hath not title to recover &c. 6 *E.*3.64. *Fauxifier* .2

In Aſſiſe, The Tenant pleaded recovery in a *Dum fuit infra ætatem* of the deviſe of his Father and the Title of the Plaintiff mean, the Plaintiff ſhewed ſeiſin of the Tenant and that he enfeoffed him againſt whom *&c.* So the Recovery upon the Leaſe of his Father falſe and feint, *&c.* and after the Aſſiſe was awarded. *P.* 30 E.3.7. *Fauxifier* 36.

Recovery pleaded in an Aſſiſe, and the title of the Plaintiff mean, he may well falſifie, as to ſay. That the Tenements are in another Town, or that *D.* and S. are ſeverall Towns, yet he againſt whom *&c.* ſhould be eſtopped by his admittance, 22 E.3 5. *Aſſiſ.* 126.

In Dower, the Tenant ſaith, that he did recover in an Aſſiſe againſt a ſtranger, and that the Title of the husband was mean, between the Diſſeiſin and the Recovery, the Demandant may well ſay, that the Diſſeiſin was not before the Title of the husband, or that he was not diſſeiſed, 14 *E.*3. *Iſſue* 22. 10 *E.*3 *eſtopple* 155.

Hee who hath an Eſtate Meane between the Writ and the Recovery, pleaded; may well ſay, That he who recovered, did releaſe to the Tenant, hanging the Writ, or if it were in an Aſſiſe, and the Tenant aliened, depending that, the Alienee may well ſay, That the Demandant did accept Homage of him, hanging the Writ, and he ſhall falſifie by ſuch pleading in an Aſſiſe againſt him who recovered, &c. For theſe extinct the Action, 21 *E.*3.18. *Fauxifier* 37.

Hee who hath his Eſtate, pendant the Writ, ſhall ſay, that the ſayd *A.* againſt whom, *&c*, had not any thing the day of the Writ, nor the day of the Judgement, and yet hee was in by the ſame *A*: and the Recovery was by verdict, ſo as *A.* was eſtopped, 17 E.3.67. *Fauxifier* 38. See above 38 *H.H.*33.

Scire facias againſt *A.* upon a recovery againſt *W.* Tenant for life, *A.* who had his Eſtate, pendant the Writ, againſt *W.* ſayd that *W.* had fee the day of the Writ brought .and as ſeems may well falſifie by plea, but yet the Tenant could not have Ayde of him. in *Conſimili caſu*, nor he ſhould not be receivd for the eſtate made pendant the writ, 32 E.3. *Err.*73.

But 36 *Edw.*3. It is ſaid, That he who hath Title, pendant he Writ, ſhall not falſifie in the Title, but only in meters proving the recovery void, and upon which the party himſelf might have Error, but not in the

point tried in the Title, nor in dilatories, which are not Error, 36 *H.* 6. 33.

In Assise the Tenant pleaded Recovery in an Assise against a stranger by *T.* who enfeoffed his Father, *&c.* and the Title of the Plaintiff mean between the Disseisin and Recovery; The Plaintiff said, that before the Recovery the estranger acknowledged a Fine, and took back an Estate to him and to his wife Plaintiff, so she was seised, *&c.* and traversed the Disseisin made to *T.* so the Recovery was a feigned Recovery, *&c.* And it was holden a good Replication, 22 *Ass.* 28.

VII. *Where party, or privy to a Recovery shall avoid it.*

THe Issue in tail shall falsifie, as to say, that his Ancestor had not any thing at the time, although that the Ancestor himself hath vouched, so as he is estopped, 12 *E.* 4. 14.

And if the Recovery was by default before appearance, the Tenant seised in fee, yet the party may well say, that he was not Tenant at the time, but such a one whose Estate, *&c.* So he may say, that he against whom, *&c.* was dead at the time; That the Land is in another County, *&c.* Also *Fortescue* conceives, that although he himself appeared, yet his Heire may well say, that he had nothing, *&c.* and shall not be estopped. *Quere H.* 6. 6 *H.* 6. 33. That the Tenant himself shall not falsifie by this, that the land is in another County, after he hath appeared and pleaded, see 18 *Ass.* 16 17 *E.* 3 67.

A man recovers in an Assise against an Infant, upon a plea of the Baily, where the Infant had nothing but the Reversion after the death of *T.* Tenant for life. Now after the death of *T.* the Infant may well enter, and being put out may have an Assise, 26 *Ass.* 4. And if the Infant had nothing but by Feoffment after the recovery, the Law is the same, *ibid. Ass.* 235.

In a *Scire facias* upon a Recovery in Waste against the same Tenant, it is no plea that he had nothing at the time as to the Damages, although the Recovery were by default, but a good plea for the land: Also upon a Recovery in Cosinage, the same plea shall oust him of execution of the Damages. Also Non-tenure shall not avoid an Execution in a recovery in Waste; and therefore to say, in such *Scire facias*, that he had not any thing but in Villenage, as the Villain of *T.* is no plea. Also Waste doth not lye against the Lord of the Town, or Villain, and so no plea, *&c.* 48 *E.* 3. 18.

It seems by *Finchden*, that against a recovery in Assise alledged against a stranger by default, the Tenant shall not say, that he himself was Tenant, *&c.* for if it was not attached, he shall have a Writ of Deceit, so he had another remedy. Also if he saith, that he against whom, *&c.* had nothing,

thing, he ought to ſhew who was Tenant, and that he hath his Eſtate, *&c.* 48 *E.* 3. *Fauxifier*, 32. *Quare* of the laſt reaſon; and ſee 14 *H.* 4. 33. a difference taken betwixt a Fine and a Recovery.

The Tenant ſhall falſifie a Recovery had againſt himſelf, as to ſay, that he had nothing the day of the Writ brought, nor depending it, although he hath purchaſed it after the Judgment, *&c.* 48 *E.* 3. 19. See for that 7 *H.* 6. 19. 36 *H.* 6. 33.

In a *Cui in vita*, the Tenant pleaded a Recovery againſt the Plaintiff and her husband by default; The Plaintiff may well ſay, that he who recovered, entred, hanging the Writ: or that the Husband died, hanging the Writ, for theſe prove the Writ abated in Deed; 21 *H.* 6. 49. *Fauxifier* 26. and 19. *Aſſ.* 8. *Error* 1. but Joynt-tenant brought Error, for that the other was dead at the time, and had all again: And that he ſhall have an Aſſiſe of the Moyety, *vide* 6 *E.* 3. 37. *Saver default*, 67. and 19 *E.* 3. *Averment* 31.

A Recovery of Lands in one Town is not a bar of other Lands in another Town, and the party himſelf ſhall falſifie for ſuch matter, 22 *E.* 4, 5 20 *E.* 3. *Fauxifier* 12 4 *H.* 6. 24. But this matter may be well helped by averment, that the ſame land was put in view, 45 *E.* 3. 44. ſee 6 *E.* 3. 1. *Aſſ.* 168. that that matter ſhall not help him, if not, that the Town be confeſſed by the one and by the other. And 26 *Aſſ.* 16. the ſame Law holden of a Fine in another Town, 6 *E.* 3. 1. But if a Recovery be alledged of the ſame land in another County by action tried, the party ſhall be eſtopped, not if it be by default, 18 *Aſſ.* 16 and 29 *E.* 3. *Aſſ.* 81.

Where the Tenant pleads a Recovery, the party himſelf ſhall not ſay, that it was upon the default of his Vouchee, who was returned ſummoned, whereas in truth he was dead, *&c.* but ſhall have Deceit againſt the Sheriff, 9 *E.* 3. 1, *Fauxifier* 40:

If the Tenant dye, hanging the Writ, this is Error, but the Heire ſhall not falſifie in an Aſſiſe, 28 *Aſſ.* 17. Alſo he ſhall not plead the ſame in a *Scire facias*, 27 *E.* 3. 88 ſee 21 *H.* 6. 49. 32 *E.* 3. *Aſſ.* 99.

The party nor his Heire ſhall not falſifie a Recovery had by a Prior, Dative, and removable by action tried by his eſtoppell, 39 *E.* 3. 24. *Fauxifier* 12.

M. 15 *Jac.* An Infant brought Aſſiſe for Lands in *Midd.* in *B. R.* depending, which the Tenant brought Aſſiſe of the ſame Land againſt the Infant in Court, and did recover by default againſt the Infant, and the Seiſin and Diſſeiſin found: And upon a plea in bar of the firſt Aſſiſe of that Recovery, the Infant by Replication ſet forth all the ſpeciall matter. It was adjudged *per Curiam*, that he might falſifie the Recovery in the Action in the Common Pleas: For in all caſes where a man ſhall not have Error nor Attaint, he ſhall falſifie; and in this caſe he could not have Error nor Attaint, becauſe the Judgment was given in *C. B.* not by default, but upon Verdict; and it ſhould be in vain to bring Attaint, for that he could give in no other evidence, then what was at the firſt triall. *Plotts* caſe.

An

An Infant may well falſifie a Recovery had againſt himſelf by default, 3 *H.*6.10. but 26 *Aſſ* 6 it is ſaid that he ſhall not do this but during his Nonage. An Infant ſhall not be condemned by default, 12. *Aſſ.* 37.7 *E.* 3.47. An Infant ſhall falſifie a Recovery had in Dower againſt his Guardian, as to ſay, that the husband never had any thing in the Land: Or that it was by default. *Quære* if it were in an Action tried, 10 *R.* 2. *Dower* 185. ſee 3 *E.*3. *Infant* 16. That a Verdict found againſt an Infant ſhall not bind him.

Aſſiſe againſt *A.* did remain for difficulty of the Verdict. the Plaintiff entred upon *A.* and he brought an Aſſiſe, and it ſeems well, and that the other had abated his Writ by Entry before Judgment, and ſo *A.* ſhall falſifie the Verdict, and the other put to his Aſſiſe Paramount, 21 *E.*3.23. *Aſſ.* 105. Note there, that *A.* brought the Aſſiſe before any Judgment given for the other.

The Plaintiff in a *Mortdanceſter* may well falſifie a Verdict pleaded againſt him in Aſſiſe, as to ſay, that the Seiſin was by diſſeiſin of him upon the Tenant who was in by diſcent, ſo the ſame defeated, and this is an Action of a higher nature, *&c.* 5 *E* 3. *Mortdanceſter* 16. 5. *Aſſ.* 1. *Mortdanceſtor* 21. the ſame Law without alledging the diſcent there, and 7 *E.* 3. 66. 21 *E.* 3. 23. 27 *E.* 3. 8. 10 *E.* 3. 40. 11 *Aſſ* 17. where the Heire did recover in a *Mortdanceſter*, after that the Tenant had recovered againſt him *in Terminum qui preteriit* by default.

But no Action upon his own Poſſeſſion after ſuch recovery by default, but a Writ of Right, *ibd.* and 7 *E.*3.62. And ſee there, that the wife who loſt the ſame Land by default in Dower, could not maintain her *Cui in vita* of a Title Paramount, but was put to her Writ of Right, whether ſhe were in before of right, or of wrong, but if the Recovery againſt her were by action tried, ſhe ſhould be reſtored to her ancient action, becauſe the other Poſſeſſor was utterly defeated. See 10 *E.*3. 40 *Eſtoppell* 155. And note that the Statute of *Weſt.* 2. *cap.*3. Remedies onely, recovery againſt the husband by default of the wives Land: And helps him in the Reverſion upon a Recovery againſt Tenant for life, or in Dower.

In Dower, the Tenant pleaded a Recovery againſt the Demandant in a *Scire facias* upon a Fine, where ſhe had aid of him in the Reverſion who joyned, and pleaded a Feoffment of the husband to him, and that found againſt him, upon which we recovered: The wife ſhewed that her husband was Heire to the Conuzee by Fine, ſo as if there were no ſuch Feoffment, ſhe ought to recover Dower, *&c* for the Verdict did not diſprove the Eſtate of her husband; and notwithſtanding the Aid-prayer of the ſtranger, and notwithſtanding the Recovery againſt her in Aſſiſe, it was holden that ſhe ſhould be reſtored to her Writ of Dower, without any proteſtation to be attendant, *&c.* 50 *E.*3.8. *Dower* 53. And there *Thorpe* ſaith, that if he who hath no Title by this way, taketh Iſſue upon the point of the Writ, and it is found againſt him, he is reſtored to his old action; but if he take Iſſue upon a collaterall matter, as a Releaſe

&c.

&c. and it is found againſt him, he ſhall not have any remedy but a Writ of Right: And therewith agrees 5 *H.*7.3. and 19 *E.*3. *Eſtoppell* 227. And he ſaid, if he cannot have a Writ of Right, he ſhall have no remedy: As if a woman plead a falſe Releaſe, and the ſame is found againſt her, ſhe ſhall not have a *Cui in vita*: But ſee the principall caſe agreed contrary to his laſt reaſon, 50 *E.*3. And he who hath loſt in Aſſiſe, ſhall have of his poſſeſſion before that poſſeſſion upon which he loſt, 32 *Aſſ.* 9. 33 *E.*3. *Title* 3.

If in a *Precipe* againſt husband and wife, of the wives land, the husband doth confeſſe a Releaſe, or other Deed pleaded againſt them, the ſame ſhall not bind the wife after his death, 34 *Aſſ.*7. *Error* 81.21 *H.*6.49.

If an Annuity or Rent-charge is demanded againſt husband and wife, or the iſſue in tail, and they confeſſe the Action, or the Deeds, the ſame ſhall not be preiudiciall to the wife, or the iſſue in tail.

Aſſiſe by an Infant, it was found that the wife of one *A.* did levy a Fine to the Anceſtor of the Plaintiff, *&c.* and *A.* entred, ſo the Fine avoided, and made Title: After the Infant ſued a *Scire facias* upon the ſame Fine; and pleaded a Divorce betwixt *A.* and the woman at the time, *&c.* and that ſhe was married to the Anceſtor of the Plaintiff, and he was received to have his plea, becauſe now an Infant notwithſtanding the Verdict; for Attaint he could not have, becauſe the Jury was not charged with the Divorce, the ſame not being alledged, and no default was in the Infant, 7 *H.*4.23. and 25.*vi.*3 *H.*6.10. Where the Alienation of the Anceſtor of the wife was found by Deed againſt the husband and wife after his death, ſhe ſhall not be bound by it, but may ſay, that nothing paſſed by the Deed, becauſe the Iſſue was not upon it: but the better reaſon was, becauſe ſhe was a Feme-covert, and no Lacheſſe was to be adjudged in her, 32 *Aſſ.*9.

VIII. *Where the Wife ſhall falſifie a Recovery had againſt her Husband, and in what points.*

THe wife ſhall falſifie a Recovery had againſt her husband in all points but in the point tried, and might ſay, how he might have better pleaded, and ſhe ſhall have Dower, if not, that the other can maintaine the Title of the Recovery: So upon a Recovery againſt him by default, 36 *H.*6. *Fauxifier* 27. 47 *E.*3.13.10 *H.*6.1.

If the husband vouch himſelf and loſeth, or might have pleaded in a Releaſe, the wife ſhall falſifie the ſame. *Perkins* 74

Wich. ſaith, That if the husband loſe upon a plea dilatory to the Writ, as Non-tenure, miſ-naming of the Town, yet the Wife in Dower ſhall compell the other to maintain the Title: And ſo it ſeems there the Recovery was upon default of his Vouchee, 50 *E.*3. 9. So where he pleads Joynt-tenancy, or Miſnoſmer, 20 *E.*2. *Dyer* 140.

In

In an Assise by an Abbot against the husband, it was found that A. died seised without Issue, and that he was a Bastard, for which the Abbot entred as in his Escheat, and was seised, till by the husband disseised: And it was found that the Abbot had right, *&c.* Now the wife in Dower did alledge, that the remainder was to her husband for want of issue of *A &c.* and she could not have the plea, because it was contrary to the Verdict, and such matter is not helped, by *West.* 2. *cap.* 4. But she may well shew a Title before in her husband, as that he entred against his Feoffment, *&c.* and falsifie in a collaterall matter, 47 *E.* 3. 3. 26 *E.* 3. *Fauxifier* 45. *Perkins* 73, and 74.

Perkins conceives that if the husband doth traverse the points of the Writ in a *Mortdancester*, where he might have pleaded to the Action of the Writ, as that the Plaintiff is issue in tail, and he himself is in by discent, *&c.* and found against him, the wife shall falsifie, and yet the issue hath right, but not by this way: But it seems there that the wife shall not falsifie, if the issue might have entred, *fol.* 74. *and* 75. And so when the husband loseth in a Writ of Entry *ad Terminum qui preteriit*, where the other ought to have a Writ of Entry upon a Disseisin had by the Father of the husband, *Perkins* 75.

In a Writ of Right against the husband and wife, where the husband hath aliened and disseised the Alienee, and the Mise joyned and found against them, *ut oportet* the heire of the wife shall not falsifie in a *Jur cui in vita*, yet her Title is eigne to the Recovery, if she hath any remedy. 5 *E.* 3. 58. *Cui in vita* 24.

IX. *Where Tenant for years, by Statute-Merchant, or by Elegit, shall falsifie a Recovery against him in the Reversion by Entry, or Plea, without* Ejectione firmæ.

IN an *Ejectione firmæ*, the Defendant pleaded a Recovery against the Lessor, and the Title of the Plaintiff mean, the Plaintiff traversed the Title of the Recovery: But it was holden that he should not falsifie, for then the Statute of *Glouc.* should be in vaine, 30 *H.* 6. *Fauxifier* 9.

Brian saith, That a Termor shall falsifie a Recovery of the Land against his Lessor, in the same manner as he shall do of a Rent falsely recovered, *M.* 1 *H.* 7. 9 but contrary to this is 7 *H.* 7. 11. *and* 13. If the Lessor be seised of the Reversion at the time, but the Termor shall falsifie in possession, as to say, that at the time of the Writ and Recovery against the the Lessor, he had nothing in Reversion, but had granted the same to *T.* to whom we did attorn, 1 *H.* 7. 9. *Fauxifier* 23. But *Brian* thinks that he shall falsifie in an *Ejectione firmæ* at the Common Law, for that doth not defeat the Recovery, as well as Grantee of a Rent-charge shall do.

Hussey, A Termor shall not falsifie no more then he in the Remainder, and

and it is all one of a Termor, Tenant by Statute-Merchant, and by *Elegit*: but he agreed to the Case of the Grantee of a Rent-charge, if he hath a Freehold, 7 *H.* 7. 11. *Fauxifier* 25. 7 *H.* 4. 13. agrees with *Hussey*, so 9 E. 4. 37: by *Danby*, but *Littleton* contrary.

Fitzherbert saith, That the Grantee of the next avoidance shall falsifie a Recovery had against his Grantor after in a *Quare Impedit* at the Common Law, 26 *H.* 8. 3. 21 *H.* 8. *cap.* 15. But a Termor of a Rectory shal never falsifie a Recovery had against the Parson in a *Quare Impedit*, although it be by Collusion, agreed 26 H. 8. 2. 43 *Ass.* 41. 27 *H.* 8. 7. 9 *E.* 4. 38. 1 *H* 7. 9. *vi.* 12 *H.* 8 8 *vi. le stat.* 21 *H.* 8. *cap.* 15.

Wilby and *Hill* held, that a Termor should plead matter in discharge of the Freehold, if the charge do begin after the Term, 19 *E.* 3. *Fauxifier* 35.

An Assise against a Termor, and he in the Reversion, and they lose by false Oath, the Termor is acquitted of the Disseisin; he shall not have Attaint, because he hath but a Chattell: But if he in the Reversion brings an Assise against the Termor, and recovers by false Verdict, he shall have an Attaint, because he is affirmed Tenant *&c.* but where the Action is brought against the Termor and him in the Reversion, and he in the Reversion doth confesse the Action, the Termor shall plead in bar. And therefore *quare* wherfore he shall not have Attaint. Also it cannot be a Recovery but upon default, or reddition of him in the Reversion: but no Receit for him in an Assise, but he is put to his Writ of Covenant. And Tenant by Statute-merchant named in Assise, shall not have Attaint, was acquitted of Disseisin, and could not have Assise because party to the Writ, and he cannot plead other plea then he in the Reversion, Tenant to the Assise pleaded. And *Kitton* saith, That a Termor named in an Assise, shall have a *Quare ejecit*, *&c.* And then wherefore should not Tenant by Statute have an Assise. *Knevit* conceives that he shall have an Attaint; 43 *Ass.* 41. 44 *E.* 3. *Attaint* 22.

And note, that by the Statute of *Glouceſter*, *cap.* 11. a Termor shall not falsifie but by receit before Judgment, and that by default, or reddition, and not for faint pleading, 7 *H.* 7. 11. But by the Statute of 21 *H.* 8. *cap.* 15. he shall falsifie for his Term, although he come in after Judgment, and for feint pleading.

Finchden saith, If in Assise against a Termor and him in the Reversion, he in the Reversion plead in bar, the Termor shall plead no bar: but if he in the Reversion do not plead in bar, the Termor shall plead in bar all such matters which extinguish the right of the Plaintiff, as a Release, *&c.* Also upon Aid-prayer, the Termor shall be received to plead; and in an Avowry he shall plead, that nothing is arrear after the Lease, aud every matter which discharged the land; but he shall not plead to a Deed alledged before the Lease, *&c.* 45 *E.* 3. 7, *and* 8. 43 *Ass.* 41. If a Termor plead in bar in a *Precipe* against him, he shall forfeit his Estate, 8 E. 4. 19. So if he bring Error, 16 *Ass.* 26.

In a Common Recovery the Vouchee doth depart in deſpight of Court, and the Termor ſhall be received as well upon the default of the Vouchee, as upon the default of the Tenant, by the Statute of *Glouceſter*, *cap.* 11. yet the Statute ſpeaks onely of the Tenant, but the Recovery ſhall ſtand as to the Freehold, and the Recoverer ſhall have an Aſſiſe being put out.

Tenant by Statute-merchant Staple, and by *Elegit* ſhall falſifie a Recovery had againſt him in the Reverſion, by equity of the Statute of *Glouceſter*, 9 *E.*4.66.7 H.7.11. But a Guardian ſhall not falſifie by it, by *Hank* and *Thirne*, 7 H 4.13.

The Statute of *Glouceſter* ſpeaks where he may have Action of Covenant, yet he ſhall falſifie although he hath not a Deed. and the Covenant is not traverſable, 9 E.4.37.

X. *Where he in the Reverſion or Remainder ſhall falſifie a Recovery againſt Tenant for life in a* Scire facias, *and where by Entry, and to what point.*

HEe in the Reverſion ſhall not falſifie a Recovery againſt Tenant for life in a *Scire facias* againſt himſelf, 15 *E.* 3. *Fauxifier* 43. *Age* 95. 8 *E.*4.28.

He in the Reverſion could not falſifie a Recovery had againſt the particular Tenant by faint pleading, before the Statute of 9 *R.* 2. *cap.* 3. 9 E.4. 36.7 H.7.11.14 H.8.4. but now by the Statute of 32 H. 8. *cap.* 31. every Recovery had againſt Tenant in tail, after poſſibility of iſſue extinct or otherwiſe for life by aſſent and Covin of the ſame Tenant, is utterly void againſt him in the reverſion.

The Statute 32 *H.*8.*cap.*31. is repealed by the Statute of 14 *Eliz.cap.*8, which makes recoveries had by Colluſion againſt Tenant for life to be void.

Treſpaſſe by a Villein againſt Leſſee for life, and he is found frank, he in the reverſion ſhall falſifie it, and by conſequence in a *libertate probanda*, ſee 45 E 3.1. *Aide* 116. *Keble* ſaith, Where the ſame thing is demanded againſt Leſſee whereof the reverſion is extinct, ſhall bind him in the rereverſion, as a Villein found frank in *Nativo habendo*. Or if it be found againſt the Leſſee in a *Quo jure* at Common; but although that in treſpaſſe it be found againſt the Leſſee, he in the reverſion ſhall falſifie, becauſe he ſhall not have Attaint, and ſhall not be prayed in aide, nor be received.

Kinſmill contrary, and that a Verdict is as ſtrong for the one as for the other: And he affirmed that he in the reverſion ſhall not have an Attaint where it is found againſt the Leſſee in a perſonall Action; but if the Leſſee loſeth by confeſſion, if it be in an Action reall or perſonall, he in the

the reverſion ſhall falſifie it, as the iſſue in tail ſhall do, 14 *H.* 7. 6. And that a Verdict is as ſtrong in an Action perſonall as reall, 7 *H.* 6. 9. 9 *H.* 6. 64. where he who had an Eſtate after, was eſtopped, and 13 E 4. 3. where he in the reverſion, and the iſſue in tail are eſtopped by ſuch Verdicts, and they had Attaints of all things, but of damages, of which the Executors ſhall have the Attaint, 13 *E.* 4. *Fauxifier* 22.

At the Common Law, he in the reverſion ſhall falſifie a recovery had againſt Leſſee by confeſſion, default, *&c.* if he have not joyned in aide with him and the falſifying ſhall be in the right, and in a *Terminum qui preteriit*, he ſhall falſifie if he hath not joyned, by *Weſt.* 2. *cap.* 3. And ſaid, that he in the reverſion ſhall never falſifie if he never had poſſeſſion. But in a point tried, or matter of record, he in the reverſion or remainder ſhall not falſifie by the Statute of 9 *R* 2. *cap.* 3. for that gives him Error, or Attaint, 4 H. 7. 2 *Fauxifier* 24. ſo that the Statute giveth reſtitution, and damages to the Leſſee, if he was not in Covin with the Recoverer.

If a rent be recovered againſt the Leſſor of the land, he in the reverſion ſhall falſifie in poſſeſſion, for he cannot have an Action, and it is not the thing leaſed: ſo of the iſſue in tail, 4 H. 7. *Fauxifier* 24. 7 H. 7. 11. 9 E. 3. 38.

The Tenant ſhall not falſifie a recovery of the rent againſt his Lord, nor *e contra*, 36 H. 6. 26. 6 H. 7. 14. but 36 H 6. 12. it is holden contrary.

Huſſey ſaith, That he in the remainder ſhall never falſifie a recovery, becauſe the whole fee is recovered, and ſo no foundation of Action for him. But *Wood* ſaith, That he may falſifie in a *Formedon* in the remainder, 7 H. 7. 11. *Fauxifier* 25. 5 E. 3 43.

And the like 12 E 4. 21. that he ſhall falſifie in a *Scire facias* againſt him where the recovery was not executed againſt the particular Tenant: So in an Aſſiſe; and there it is ſpoken of the Statute which helps him in the remainder.

If a *Precipe* be brought againſt one who hath nothing, but purchaſeth for life, hanging the Writ, the ſame is no cauſe for him in the reverſion to falſifie, no more then for the Tenant himſelf, 48 E. 3. 14. *Fauxifier* 33.

The Heire in a *Scire facias* for Dower ſhall recover againſt his Guardian for his default within age, and may well plead, that the husband was never ſeiſed, that ſhe could have Dower, 10 *R.* 2. *Dower* 185.

A recovery againſt Leſſee for life by anſwering to the Action which doth ſuppoſe the reverſion to the recoveror, the Leſſor ſhall enter for a forfeiture, and ſhall falſifie the recovery in Aſſiſe, 5 E. 3. *Entry Congeable*, 42. 5. *Aſſ.* 3.

Aſſiſe againſt Conuzor and Conuzee for life by Fine, and the Diſſeiſin found, the Plaintiff enters: Now he in the remainder by the Fine ſued a *Scire facias*, being Heire to the Conuzee for life, who pleaded the Diſſeiſin found, and that he did not diſſeiſe before the Fine, and it was a good plea, becauſe it is not directly contrary to the Verdict. Alſo it was

ſaid, that he ſhall not be eſtopped of any plea, by that, that he is Heir, *&c.* becauſe he claimes the remainder not by him: And agreed there, that he in the Reverſion ſhould falſifie in the point tried, becauſe he could not have an Attaint, 9 *E.* 3. 13. *eſtoppell* 154.

If a recovery be had againſt Leſſee for life, who recovers in value againſt his Vouchee, he in the reverſion is without remedy at the Commou Law, becauſe he alſo ſhall have the Land in value, but if the Demandant counterplead the Voucher, and it is found for him, he in the reverſion ſhall falſifie in a Writ of Right, becauſe the Vouchee hath not entred into the Warranty: But if he enter into the Warranty and loſeth by default, he in the Reverſion ſhall be bound for the reaſon before, as a Releaſe to the Tenant for life ſhall enure to him, 5 E. 4. 2, and 3. But note, if this Voucher be to be for a Warranty made to the Tenant for life, he ſhall not recover but for life, if not that the Vouchee loſeth the advantage by generall entry into the Warranty, 38 E. 3. 11. for if ſo, he ſhall recover Fee for both.

But againſt him in the reverſion, he ſhall never recover in value, but for life, by *Green*, 16 E. 3. *Voucher* 87. He in the remainder ſhall alwaies have the Land recovered in value by the particular Tenant. Not ſo of the Grantee of the reverſion, becauſe by two ſeverall Deeds, 23 E. 3. recovery in value 11. but 12 E. 4. 20. It is holden no difference whether he vouch the Leſſor, or a ſtranger, but that he in the reverſion, or remainder ſhall have alſo the Land, *&c.* but alwaies it behoves that the Leſſee be in of the ſame Eſtate leaſed at the time, *&c.* otherwiſe he in the reverſion ſhall not have advantage of the recovery in value, becauſe not privie in Eſtate, and therefore ſhall not be bound by it: The ſame Law is of the iſſue in tail, 12 E. 4. 20. Alſo he in the reverſion may well falſifie, for that, that the Leſſee had not any thing at the time, for that doth prove the recovery void, 12 E. 4. 15.

FEOFF-

FEOFFMENTS, AND FAITS.

I. *Where a Deed may have two Deliveries, where not.*

NOte, the ſecond delivery of a Deed is void, where the firſt took any effect; As the Deed of an Infant, or of a man impriſoned, *&c.* But *Martin* ſaith, That if I releaſe all my right to *J. S.* in the Mannor of *D.* where none of us have any thing in the Mannor, and I re-deliver it to have being ſeiſed then of the Mannor, this is good, becauſe the firſt delivery was utterly void, 1 *H.*6.4. *Feoff. and Faits*, 1 *vi* 1 *H.*7.14. *vi.*11 *H.*7.16.33 H.8. *Dy.* 51, 1 *Eliz. Dy.* 167. *Tawes* caſe, 8H.7.15.13 *Eliz. Dyer* 192. *ac.*

If the Patron makes a Confirmation of an Annuity granted by the Parſon, and deliver the Deed, before the Parſon deliver the Deed of Grant, and after the Deed of Grant is delivered by the Parſon, and the Grantee deliver back the Patron his Deed of Confirmation, who re-delivereth it, *&c.* this is good, becauſe it took not any effect by the firſt delivery, 8 H.6. 6.

A man makes an Obligation to *B.* and delivers the ſame to *C.* to keep until certain Conditions between *B* and him are performed, ſealed, and delivered to the Plaintiff: Now this delivery is altogether void, becauſe it is not expreſſed, that after the Indenture ſealed and delivered to him, that he ſhall deliver the Obligation to *B. &c.* 19H. 6. 37. *Repleader* 9.

II. *Where*

II. *Where a Deed ſhall be good, made by another in my name, and by my commandment.*

A Man commands a ſtranger to make ſuch a Deed, and the party himſelf ſeals and delivers it to him who writ it, to keep untill, *&c.* the ſame is no Deed without another delivery. 9 H. 6. 37.

Note, if I command one to make a Deed in my name, and deliver it in my name, this is my Deed, be *Babbington* and *Martin* clearly, 3 H. 6. *Feoff.* 2. If *I.* deliver a Deed to *S.* to deliver over to *D.* who doth it, the ſame is as good as if I my ſelf had delivered it to *D.* 27 H. 6, 7. *Feoff.* 13.

An Abbot ſhall be bound by a Deed which his Monk made by his commandment, *Perkins* 1.

III. *Where a Deed delivered upon Condition to deliver over, ſhall be good by the firſt delivery without the other, and where he may diſagree to that Delivery.*

IF I deliver a Deed to one to deliver to *I.S.* when he comes to *E.* it is my Deed preſently, and good although it be delivered before he cometh to *E.* and if *I.* dye, and after he delivereth the Deed at *E.* the ſame is my Deed, which is not, if it were not my Deed at the beginning, 8 H. 6. 26. *Feoff* 4. *vi. C. 9. part Throughgoods* caſe, *ac.* 9 H. 6. 37 54 E. 4. 2. 12 H 8. *Rot.* 751. 11 H. 7. 16. 19 H. 8. *a. ac.* 35 *Aſſ.* 6. *ac.*

Note, the *Quere*, 29 H. *Dyer* 34. Whether an Obligation may be delivered to the Obligee as an Eſcrowle, is reſolved, *C. 9. part* 137. in *Throughgoods* caſe, that it is the parties Deed preſenly.

In Aſſiſe the Tenant pleaded a releaſe of the Plaintiff, who denied it, and it was found that it was delivered in *Cowell Maines*, upon a certaine Covenant *&c.* and afterwards delivered to the Tenant, the Covenants not performed againſt the Will of the Plaintiff, *&c.* And the opinion of the Court was, that the Plaintiff ſhould be barred, 16 *Aſſ.* 18. *Feoffments* 83.

And therewith agrees 9 H. 6. 37. *per Curiam*, That if a Deed be delivered into the hand of another to be delivered over upon certain Conditions to be performed, and he, *&c.* gets the Deed, the Conditions not performed, yet this is a good Deed: And if in an Action upon it the Obligor doth alledge all the ſpeciall matter, and concludes, ſo not his Deed, the Court *ex officio* ſhall give Judgment for the Plaintiff, becauſe the Deed is confeſſed, *&c.* But if a man make an Obligation, and commands another for to keep it untill, *&c.* and doth not ſay, that then he ſhall deliver it over: And the party gets the Deed, and brings an Action upon it, the Obligor may alledge the ſpeciall matter and conclude, ſo not his Deed,

deed, becauſe there was no delivery of the Deed in fact, nor confeſſed in Law by ſuch pleading &c. 9 H.6. 37. *Replead* 9. But it is holden, 8 H.6. 27. by *Babbington* and *Coteſmore*, that a deed delivered in the hands of another, as to be delivered over upon conditions to be performed, is not my Deed by delivery of the Bailiff, before the Conditions are performed.

But 10 H.6.26. A difference is taken where it is delivered to the Bailiff, as an Eſcrole to be delivered as my Deed upon the Conditions performed, and where it is delivered as my Deed at firſt ſo to deliver over upon the conditions performed, for in the laſt Caſe it is my deed preſently, in the firſt not untill the conditions performed, for the conditions are precedent, for it was never my Deed, and with this difference agrees, 27 H.6.7. *Feoffments* 13. 19 H.8.3. But it is there ſaid that delivery to the party himſelf, as an eſcrole is nothing worth.

A man pleaded in Bar of an accompt, that if he acknowledge a Statute to the Plaintiff at *C.* &c. and ſaid that he came thither at the day, and acknowledged the Statute, and becauſe the Plaintiff was not there, he delivered the ſame to the Clerk to deliver to the Plaintiff &c. but becauſe the Defendant took it back again from the Clerk before he delivered it to the Plaintiff himſelf, he was adjudged to accompt, 20 *E.* 3. *Accompt* 79.

IV. *Where a Deed indented is not worth any thing, becauſe the words of the one are in the firſt perſon, and the words of the other in the third, and where it is good, all the words being in the firſt perſon, and ſpoken by one.*

THe deed of an Abbot was *Noverint* &c. *nos conceſſimus W. H. unum Croſtum* &c. *& pro hac conceſſione, idem W. renunciavit totam communiam, quam habere conſuevit, cum diverſis averiis* &c. *uni parti penes nos* &c. and the deed was indented, and it was holden as no deed, becauſe the Abbot ſpake in the firſt perſon, and for *W.* it is ſpoken in the third 9 H.6.35. *Feoffments* 5.

If a man make a Feoffment reſerving Rent by Deed Poll, this is good by *Needham* and *Littleton*, but *Danby* denies it, if it hath not the words, In witneſſe whereof the Feeoffee *ſigillum ſuum appoſuit*, for otherwiſe all is the Deed of the Feoffor, which hath no Reverſion, ſo the Rent reſerved ought to be by grant of the Feoffee &c 8 *E.* 48. *Feoffments* 42. *vide* 5 H 6 33. by *Danby*, *eſtoppell* 88.

Note by *Schard*, that a deed which is indented and Sealed is the deed of both, although one doth not ſpeak any thing therein in the firſt, nor in the third perſon, but that all the words are the words of the other, becauſe it is indented and ſealed by both, 9 *E.* 3.18 *Aſſiſe* 155.

A deed indented, is alſo a ſtrong eſtoppell, when but one party ſpeaks all, &c. and there is no grant nor Covenant of the other party, no if it

it had been covenanted of every part, *vide* 35 H.6.18. *eſtoppell* 87. where the Indenture of the Predeceſſour was pleaded againſt an Abbot, but the other party ſhall not be bound by ſuch Indenture, although it hath expreſſe words in the end, becauſe the one part remained with the party who ſpeaks the words &c. and he hath put his Seal &c. 35 H.6.33. *Eſtoppel* 88. and ſee that this is contrary to *Schard*, 9 *E.*3.18. but 4 *E.*2. *Obligation* 16. That if he who is bound in the deed put in ſuch clauſe, *Quod in majorem rei ſecuritatem, inveni fidejuſſores, quorum unuſquiſque in toto, et in ſolido ſe obligavit*, although that none ſpeaketh but the principall, yet if they ſet to their ſeals, this is an acceptance of the words of the principall, and they themſelves are principalls, by *Spig* Juſtice, *quod nota* &c. and this is agreeing with *Schard.*

V. *Where a Deed ſhall be void for the incertainty of it.*

A Deed was, *Nos conceſſimus B. & c. & idem B. pro hac conecone renunciavit communiam &c.* and the Deed holden void againſt *B* becauſe it did not expreſſe to whom he had renounced the Common, yet it was a deed indented and ſealed alſo by *B.* 9 *H.*6.35.

A man gave Lands to *B.* and *C.* & *haredibus*, leavingout the word (*ſuis*) with warranty to them and their heirs, and although the warranty did expreſſe the meaning of the party, yet for the incertainty of the words of the grant, it was adjudged, that they had but an eſtate for life, 19 *H.* 6. 73. 20 *H.* 6.35. *Feoffments* 8. 22 *H.* 6.15. *acc.*

VI. *Where and by what Pleas a ſtranger or privy ſhall avoid a Deed.*

STrange ſaith, that a ſtranger ſhall not ſay, Not the Deed of him &c. No more ſhall he ſay, that nothing paſſed by the Deed by him, wherefore againſt a Deed of Feoffment of a ſtranger alledged by the Defendant in Treſpaſſe, the Plaintiff ſaid, that he did not enfeoff, or that nothing paſſed &c. by the Deed, 10 *H.*6.7. *Feoffments* 6. and thereunto agreed *Forteſcue* and his companions, and ſo was it adjudged, 28 *H.*6.6. *Feoffments* 14.

A Writ of Entrie, the Defendant did maintain his Entrie for not payment of Rent, the Plaintiff ſhewed an acquittance of it, and that the Defendant was a ſtranger, for which he ſaid, he did not receive the ſum by the Deed &c. and admitted a good iſſue 2 *E.*4.1. *Feoffments* 20. 12 *E.*4.4. 20 *E.*4.1. 12 *H.*6.2. 3 *H.*6.27. 10 *H.*6.7.

In Aſſiſe the Tenant pleaded the Leaſe and Releaſe of a ſtranger to his Father, and gave colour by a Feoffment of the Heir of the ſtranger, to the

the

plaintiff, after &c. The Plaintiff ſaid, that the ſtranger did not releaſe by the Deed, 38 *E.*3.11.*Feoffments* 46.

Formedon in the Remainder, ſhewing the Deed of the Tenant, a ſtranger could not plead that he did not give by the Deed, for ſuch plea doth admit him Reſponſible, and the Deed is not to another intent, by which he ought to anſwer to the gift, but *Schard* ſaid, If you had ſaid, that nothing paſſed by the Deed, perhaps it might have been received, 10 *E.*3. 1.*Feoffments* 76.

Ad Terminum qui præteriit, the Plaintiff counted upon a Leaſe of his anceſtor to a ſtranger &c. the Tenant ſhewed a Deed, by which the anceſtor did enfeoff the ſame ſtranger in Fee, the plaintiff ſaid that nothing paſſed &c. and *Schard* thinks it a good plea, becauſe when it is uſed as a Deed of Feoffment *per* this Plea, it is avoided to all intents, for the Deed is to no purpoſe, without Livery and Seiſin, a ſa Deed of a Fee, and Livery is made in Tail, he ſhall have but Tail by *Schard*, who ſaid, that ſo it was adjudged, alſo he ſaid, that if I make an Indenture of Fee, and ten years after I leaſe him for ten years without Deed, he hath not eſtate but for the Term. *Parn* and *Trew*, Serjeants, denied that, and ſaid, that it was his folly to ſuffer the continuance of poſſeſſion, for that ſhall be intended upon the deed, and in the end it is ſaid, that this is againſt the courſe of the Law before uſed, for to ſuffer the averment, 12 *E.*3.*Eſtoppel* 176. 15 *E.*3. *Eſtoppel* 23 *b.* 2 *E.*3.24. 10 *E.*3. 41.

Intruſion upon a Leaſe of his father, to a ſtranger for life, the Tenant ſhewed a Deed, by which the father gave the Land to the ſame ſtranger in Fee, the Plaintiff ſaid, that nothing paſſed, and no Plea by *Hill* and *Wilby* in that Writ, nor in Entrie *ad Terminum qui præteriit*, but good in Entrie grounded upon a Diſſeiſin, for that is the ancient courſe of the Law by them, and they ſaid, that upon ſuch Deed he ſhall have Fee, although the Liverie without Deed made after was but for life, 19 *E.*3. *Eſtoppell* 184. and according to that of Entrie *ad Terrminum qui præteriit* &c. 18 *E.* 3. 16. where it is holden, that upon ſuch a Deed ſhewed, and continuance of poſſeſſion confeſſed after the making it ſhall be intended upon the ſame Deed, *Eſtoppel* 220. But ſee that 19 *E.*3. is printed, that *Hill* ſaid, that in Entrie *ad Terminum qui præteriit*, that he is contrary to the reaſon there, and to his own opinion 18 *E.*3.16.

See 32 *E.*3. *eſtoppel* 247. where privy to a Deed (s) the heir ſaid, that nothing paſſed by the Deed, notwithſtanding that the contrary thereof was found by Verdict in an Aſſiſe by the ſame party againſt him.

Nothing paſſed by the Deed is no Plea, when the thing might well paſſe without Deed, as in Aſſiſe the Tenant ſaith, that the Land was given to the Father of the Plaintiff for life, the remainder to him &c. that nothing paſſed was held no Plea for the Plaintiff, 9 *H.*4.3.*Corodie* 42.

Note where the Deed is made in Seiſin of the party, that nothing paſſeth &c. ſhall be no Plea, for then it ſhall be well uſed as a confirmation, 3 *E.*3.24.*Eſtoppell* 131. 44 *Aſſ.*3.*Aſſiſe* 355.

VII *Where a man ſha'l take advantage by enrollment, and where the King &c. and where the enrollment ſhall ſerve for the Deed, and where a Deed ſhall be enrolled, where not.*

NOte by the Court, if a man releaſe to the King by Deed enrolled, the King ſhall not plead this Deed, if he do not ſhew it under the Seal of him who made it, for if the Deed be loſt, the enrolment ſhall ſerve for nothing, and ſo it is of a common perſon, 19 *H.*6.6. *Feoffments* 7.

In a Formedon, the deed of the Anceſtor of the demandant with warranty was pleaded &c. and the ſame being delivered to the demandant, the Seal was broken off by a ſtranger, and upon confeſſion of the ſame both the parties were impriſoned, and the deed enrolled *verbatim*, ſo as the enrolment did ſerve in the place of the Charter, *A.*3 *E.*3. *Itin. North. impriſonment* 23.

Sadler ſaid, If a Charter be enrolled here, If I bring againſt him who made it warranty of Charters, he ſhall be driven to anſwer, without ſhewing of his deed, becauſe it is enrolled here of Record, which *Herl* utterly denied, *H.*7 *E.*3.7.

A man ſhall not deny a deed which is enrolled, by *Babbington* and *Paſton*, but he may well avoid it, as to ſay, that nothing paſſed, or that he had not any thing in the Land at the time of the Releaſe &c. 9 *H.*6.60. *vide* 16 H.7.5. *acc.* See 7 *E* 4.5. That he ſhall not avoid it by *Dureſſe*, nor by Nonage.

The Court would not ſuffer a deed of Feoffment to be enrolled, becauſe it appeared upon examination that no Livery and Seiſin was made, 44 E.3.7. *Feoffments* 52.

Littleton did examine him who came to enroll an Obligation, if he would have it enrolled &c. and of his age, and he ſaid, that he ſhould not avoid it afterwards by *Dureſſe* or Nonage, nor deny it, and it was ſaid, that the deed of the husband and wife during the Coverture ſhal not be enrolled, becauſe it is not the deed of the wife, 7 E.4.5. *eſtoppell* 68. and to this laſt Caſe agrees 5 E.4.7.

VIII. *Where a man ſhall ſay, that the Deed was made at another place then it beareth date.*

HE who pleads a Deed bearing date at *D.* ſhall not ſay, that it was made and delivered at *S.* but he may ſay, it was firſt delivered at another day *&c.* 22 *H.*6.12. *Feoffments* 10. and he may not vary from the place, 33 H.6. *Feoffments* 43. *and* 31 H.6. *Feoffments* 104.

But

But with ſpeciall matter he may vary from the place written in the deed, as to alledge that it was made by *Dureſſe* at *D.* or in another County, 9 *E.* 3.9.31 H 6. *Feoffments* 104.22 *E.*3.15.1 H.6.3.

Cheney held no difference of the day and place, but that he might vary in both Caſes, 4 H.6.14.

IX. *Wheer a Deed pleaded ſhall remain in Court, and where it ſhall be delivered to the party.*

NOte, that when a deed is denied, the ſame ſhall remain in Court, becauſe it ought to be tried, and ſhall be delivered to the Jury to ſee it, and the manner of making of it, but when it is confeſſed it ſhall be delivered to the party, 38 H 6.13. *Feoffments* 19.

Aſſiſe adjourned into the Common Pleas, upon a forreign Releaſe pleaded and denied, and the Aſſiſe awarded at large upon default, a dthe Atturney of the Tenant prayed the delivery back of the Releaſe, and he could not have it, for the Record muſt be ſent back whole &c. but he ſhall have the ſame delivered back to him by the Juſtices of Aſſiſe, H.14 *E.*3. *Feoffments* 66.

Needham ſaith, if an Obligation denied, be found for the Plaintiff, it ſhall be delivered back to him, and if againſt him, it ſhall remain in Court untill the plaintiff hath reverſed the Judgement, 9 *E.*4 54. *vide* 7 H. 4 39. and in the firſt caſe it ſhall be cancelled.

X. *Where a man ſhall ſay that the Deed was made at another day, then it bears date, and after the date, although he do not alledge that at the firſt, or before the date of it.*

DEbt by a woman, the Defendant pleaded the Releaſe of *T.* her husband, ſhe ſaid, that *T.* was not her husband at the time of the making &c. and the enqueſt taken from the time of the making, and not from the date, yet ſhe took no Proteſtation of the date &c. 15 *E.* 3. *Feoffments* 63.

The Conuſor pleaded the defeaſance of a Recogniſance, which bore date before the Recogniſance with averment, that it was made and delivered after the Recogniſance, and Judgment given againſt him for the elder date; but it was afterwards reverſed by Error, 29 *Aſſ.*47. *Feoffments* 87. *vide* 18 H.6 8. *Vide C.*5 *part Claytons Caſe.* 11 *Eliz. Dier* 307. a deed takes effect from the delivery, 12 H 6.1. *acc.*

In a *Cui in vita*, the Defendant pleaded a Releaſe of the Demandant, ſhe was received to averr that ſhe was within age at the time of the making, although ſhee was examined, and accepted of full age upon the fine levied after the date, H. 3. *E.* 2. *Feoffments* 95.

But ſee 12 H.6.1. Where a man could not averr the Deed to be made before the date, *Releaſe* 7. but well that it was made after, and with that agrees *M.* 12 *Ed* 3 *Aſſiſe* 116. hee who takes ſuch plea, hee againſt whom the Deed is pleaded, or he who uſeth the Deed, 12 *Aſſ.* 37.

A man ſhall well ſay, he was within age at the day of the making, although he was of full age at the day of the date, but then he ought to take the date by proteſtation, for otherwiſe the deed ſhall be intended to be made the day of the date, by *Herle*, 8 E.3 3. 46 E. 3.33. *eſtoppel* 206.

Vi. 12 *H.*6.2. *Br. eſtoppell* 46. *acc.* In a *Quare impedit*, a man was not admitted to averr that he was within age at the time of the making of a Deed, when as it appeared by plea, that he had ſued Livery as of full age before the date of the Deed.

Executors ſue Execution of a recognizance made to the Teſtator, and becauſe the Probate was of elder date, then the Will it ſelf, it was awarded that the Defendant ſhould be diſcharged, 18 E.2. *Feoffments* 120. See 12 *H.*6. 2. where Executors cannot plead a releaſe to the Teſtator which was dated after his death, &c.

Debt againſt a Maſter of a houſe upon an Obligation of the Predeceſſor, the Defendant may aver, that he was not Maſter at the time of the makeing of the Deed, *&c.* 26 E.3,3: *Debt* 165.

A man may well plead againſt his Deed of releaſe, that he had not any thing at the time of the making of it, without anſwering to the date, if he hath not eſtopped himſelf by the manner of his pleading, 46 E.3.12. *eſtoppel* 202.

9 H.6.9. 20. E.4.10. 49 E.3.14. *ac. Br. eſtoppel* 43.

If the Tenant vouch, and ſhew a deed of the binding which bears date after the Voucher, yet that is nothing to the Demandant, but *Fitzherbert* thinks that the Vouchee may well diſcharge himſelf thereof, 38 E.3. 28. *Voucher* 57.

A Releaſe made the ſecond day of *May*, is no bar of an Obligation, dated the firſt; but firſt delivered the fourth day (which was granted) but if the Plaintiff declare generally upon an Obligation dated the firſt, and doth not alledge the firſt delivery the fourth, he ſhall be barred by the releaſe, and he ſhall not have liberty after to aver the delivery, *&c.* by *Vaviſor*, 5 H.7.26. *Bar* 147. See there, that every deed ſhall be intended to be made the day of the date, but that intendment need not be traverſed.

XI. *Where a Deed ſhall be ſayd the Deed of the Abbot alone, and where the Deed of the Abbot and Covent.*

IF an Abbot or Prior ſeal a Deed with the Covent ſeale, yet it is the Deed of the Abbot or Prior alone, and not the Deed of the Covent, although it hath ſuch words, *In cujus rei Teſtimonium*, wee have ſet our common Seal, 37 H.6. *Feoffment* 17. *Perkins* 27.

Note, A Deed of the Abbot and Covent is good with theſe words, *In witneſs &c. we have put our ſeal*, leaving out, (*Common*) for it ſhall be intended their common Seal, *M.* 10 *Edw.* 4. *Feoffments* 27. 11 *Edw.* 4.4.

Alſo they may well make a Deed out of their houſe, for it is ſufficient if they meet together &c. but if it be dated in the *Chapter houſe*, the ſame cannot be but in their Chapter. But if it be dated at *London*, it is good, although the Chapter-houſe be elſewhere. Alſo a Deed which is made by them in their houſe may be delivered elſewhere by a ſtranger, by a Letter of Attorney, not by their commandement only, 9 E.4. 39. 14 H.6.16.

If an Abbot maketh an Obligation *&c.* and in the end of it ſaith, *In witneſs whereof* &c. *Sigillum Conventus appoſui*, yet the Covent is not bound thereby, but if he ſay with the aſſent of the Covent, &c. *Appoſui, &c.* the ſame is good: And note the Deed of the Covent ſhall be a good Iſſue in an Action againſt the Succeſſor, 14 H.6.16. *Debt* 35.

If the Abbot & Covent ſeale a Deed with the ſeale of a ſtranger, yet this is good, & ſhall bind the Succeſſor with the words, *Sigillum noſtrum &c.* 22 E.3. *Abbot* 21. *Perkins* 27.

XII. *Where an Abbot, a Covent, Mayor, and Commonalty may do things without Deed, where not, and ſo of other bodyes corporate.*

NOte, *Choke* ſaith, That the Deed of an Abbot and Covent may well be delivered by a ſtranger, by force of their Letter of Attorney, but not by their commandement, which *Genney* agreed, 9 *E.*4. 39.

Note, one may juſtifie in Treſpaſs a ſervant to the Mayor and Commonalty for ſmall things, *&c.* without Deed, ſhewing their Commandement, ſo as hee ſhew a Deed of his Retainer; but he cannot do a thing which ſhall veſt or deveſt a freehold; without ſhewing a Deed of their Commandement, 7 *H.*7.16. *Monſtrans* 115.

Note, by *Pigot and Brian*, that a Leaſe or Feoffment made by the Mayor alone is void, ſo of a Dean, and if it be by Mayor and Commonalty,

it behooveth to have a Deed, otherwiſe it is void, by *Brian*, and a Leaſe made to the Mayor and Commonalty, for the term of their lives, is not determinable, by *Pigot*, and *Brian* in a manner confirmed it, 22 *Edw.*4. *Feoffments* 29.

Note, the Aſſignment of Auditors done by a Commonalty is good without deed, and ſo is juſtification by their commandement, and alſo by the Commandement of the Covent in time of vacation, to fell their Wood, and to do their neceſſaries for them, *T.*12 *E.*4.10.

Note *Townſend* ſaith, That a Body corporate may well grant an office or ſuch like things which do belong to ſervice without Deed, for they may have a Plough-man, Cook, Butler, and the like without Deed. And it is a common courſe, to juſtifie by the commandement of a body corporate, without ſhewing any thing thereof. *Bryan*, a body corporate cannot do any thing of themſelves: *Vaviſor*, in the time of *Edward the fourth*, *Pigot* alledged, that a body &c. aſſigned Auditors, and it was not allowed *Per Curiam*, without ſhewing a Deed. *Townſend*, Aſſignment of Auditors, is a thing which belongs to the Juſtices, and *Brian* ſaith, That if one occupy as Bayly to a body Corporate, he ſhall be charged to account, although he be not Bayly by Deed, 4 *H.*7.17 *Feoffments* 32.

Note, It was ſayd, a man may juſtifie the doing of things, which is for the profit or ſervice of the Dean and Chapter by their bare commandement, but it was in a manner agreed, that he ſhould not maintain Debt againſt them for his travaile in the buſineſs, 13 *H.*7.17.

XIII. *Where a Deed or Seal ſhalbe for many, and ſhalbe their Deed.*

IF twenty ſay in a Deed, *Sigilla noſtra appoſuimus*, and there is but one Seal put to it, yet it is a good Deed againſt the others, 8 *H.*4. 4. 22 *H.*6.4. by *Portington*.

Note, where foure leaſe by a Deed, ſealed with two ſeals, this is a good Leaſe of them all with averment, &c. In waſt, declaring that the foure leaſed, and maintained with ſpeciall matter in the Replication, 9 *H.*4 *Feoffments* 39. *vi.* 39 *E.*3. 41.

If foure or five make a deed which hath but one ſeal, yet the Deed is good againſt them all, being ſealed by them all with one Seal, in one place, 27 *H.*6. *Feoffments* 105.

A man leaſed to two by Indenture, and there are diverſe Covenants on both parts, and the Leſſees bound by the ſame Indenture to pay *&c.* and one only ſet his Seal to the Indenture, yet debt brought againſt him alone by the Leſſor, did abate, becauſe the other were not named, who did not ſet their ſeals to the Deed, &c. 39 *E.*3.9. yet the Duty did accrue upon

upon a Condition in the Indenture, which did not belong to the Eſtate.

XIV. *Where a Deed is good although the one party or the other, or the thing which paſſeth be miſnamed in the ſir-name or proper name, or where the proper name is changed, where without any name, &c.*

NOte, *Hanke* delivers it expreſly for Law, If Land be given to *J.S.* and *B.* his wife in ſpeciall tail, *&c.* where her name is *A.* yet is a good gift in the whole, and the land ſhall paſs by the Deed and Livery without queſtion. And if Land be given to *J. S. & uxori ſuæ*, this is good without naming the wife by name, 1 *H.*4.5. 1 *Aſſiſe* 11. agreeth, if the wife had taken the advantage, eſpceially there, for the reaſon of *Scrope* there given, *Vi* 3. *Aſſ* 4. and with this laſt caſe *Green* agrees, *M.*30.*E.*3. 18 But he who claimes by ſuch a Deed, ought to give the wife her proper name, the caſe there was, That Land was given to *T*, and *M.* his wife in ſpeciall taile, the remainder to *J.* ſon of P. on the body of the daughter of *J Candy*, begotten in fee, and his heir brought a Formedon in the remainder, as heir of *J.* ſon of P. of the body of *I.* the daughter of *I Candy*, begotten, and the Writ was awarded good, notwithſtanding the variance, becauſe he could not have another Writ: Alſo a gift to the daughter of *J S.* not named, is good, with Livery and ſeiſin given to the daughter, *Feoffments* 64.

Annuity againſt an Abbot upon the grant of his Predeceſſor, and declared that *O. de S.* Predeceſſor, granted and ſhewed a deed which had no proper name of the Abbot, yet it was holden good, 20 *Edw.*3. *Annuity* 33.

In Debt by *J. Boſome* upon an obligation, the Defendant pleaded his Acquittance which was written *Bozome*, and yet well, notwithſtanding it was alledged, that he by the name of *Jo. Boſome*, &c. 14 H.4.13. *Feoffments* 44, ſee 22 H.6 48 *Bar* 32: where the Defendant in debt pleaded ſo, but that was only to take away ambiguities, for he needed not have done ſo, by *Paſton, vi acc.* 9 *Edw.*4 43. *Grants* 23. That a grant or an Obligation made to *W.S.* is good, although his name was *W. G.* with ſet-ſetting forth the ſpeciall matter. But otherwiſe it is, if the deed be by a falſe proper name, by *Danby*, and *Jenney*, yet *Littleton*, ſaid, That *W.G.* ſhall have a Formedon in the Remainder, upon the Remainder given to him by the name of *J.G.* becauſe he is the ſame perſon, *Quere.*

*Vi.*4.H.7. 15.3 H. 6.2.*ac: Vi.C.* 4 *part* in *Ayres* caſe, If the perſon be ſo deſcribed, that hee may be certainly known, the miſ naming of him is not materiall.

Debt againſt an Abbot upon an Obligation made by him by the name of

of *I.B.* of *C.Clark*, he ought to declare, *Quod cum praditt. Abbas per nomen I. B. de C. Clericus conceſſit ſe teneri, &c.* 4 *E.*4. 26.

If an Action be brought againſt me by a contrary Sirname, addition, or name of Corporation, and a ſtranger doth maintain againſt me, I ſhall have an Action of Maintenance againſt him by my very name, and ſhall declare of Maintenance in an Action againſt me, *per nomen, &c.* And *Danby* ſaid, So if I be miſnamed in my proper name of Baptiſme, *M.*10. *E.*4.19.

Annuity againſt the Prior of St *John*, declaring that his Predeceſſor by the name of the Prior of the Hoſpitall of St. *John* did grant, and the opinion was that the Writ ſhould abate, for the variance from the ſpecialty upon which it is grounded, although he declared ſpecially, and the Writ is alſo according to the Corporation, for the Grant was by the Prior and Covent. ſo the Succeſſor eſtopped, but he ſhall take it by proteſtation, and ſo ſaves his name of Corporation, *T.*11 *H.*6.51. *variance*, 9. *vi.*11 *E.*3. 2. *variance* 26. *ac.*

In an Aſſiſe againſt *Julian*, ſhe ſaid, that the Anceſtor of the Plaintiff did enfeoff her by the name of *Gillian*, by this Deed, *&c.* And the opinion was againſt the Tenant, becauſe it cannot be one name upon the Deed ſhewed, 29 *Aſſ.* 16. but *Fitz.* reades it, that the Anceſtor of the Plaintiff did enfeoff her by the name of *Julian*, by this Deed, and the Deed was *Gillian*; *Feoffments* 86.

If a man make a Feoffment of ten acres by the name of a Mannor, it is a good Feoffment by reaſon of the Livery *per Curiam*, 22 *H.*6. 39. *Feoffments* 9. and 27 *H.*6.2. *Feoffments* 12. *vi.*16 *E.*2. *Gar. of Charters* 31.

Alſo if a man purchaſe according to his name of Baptiſme, and after that is changed by the Biſhop when he is confirmed, yet it is a good purchaſe, 12 *R.*2. *Feoffments* 58. And a Recovery had againſt him before ſuch confirmation ſhall ſtand after his name is ſo changed, 9 *E.*3. 14. *Feoffments* 74.

An Abbot grants Common by the name of *Rich.* where his name is *John*, his Succeſſer ſhall not avoid this Grant, 27 *E.*3. 9. *Grants* 67. *Perkins* ſaith, That here the name is not material, *fol.*98. See more of this in the Title of *Grants*.

Note, that Land ſhall not paſſe by the Deed of Grant of a houſe, with Livery in the houſe, becauſe the Land is not parcell of the houſe: But an Acre ſhall paſſe by the name of a Carue, and a Carue by the name of a Mannor, 27 H.6 2. *Feoffments* 12. 5 H.7, *ac.*

If the Deed of Feoffment be of two acres, and the Livery in foure acres, all ſhall paſs by the Deed, by *Danby*; As if the Deed is of a Mannor, or houſe, and the Livery is in twenty acres, they ſhall paſſe by the Deed, which *Choke* granted, if they be known by ſuch name, or otherwiſe by the Livery, *M.*7. *E.*4. *Feoffments* 23. *vi.*7 *E.*4. 24. *Confirmation* 4.

In an Aſſiſe againſt *I.S.* he pleaded a Feoffment made to him of Land by the Deed, and the Deed was *I.N.* yet good, becauſe he may be known by

by one or the other, but if the Deed be *W. S.* or of the Mannor of *D.* where he alledgeth a Feoffment of the Mannor of *S.* the ſame is not to the purpoſe: and that was agreed by all the Juſtices, who alſo ſaid, that although he might have pleaded the Feoffment without Deed, yet when he alledgeth a Deed, and ſhewes it, he ſhall not have advantage of the Feoffment but according to the Deed, and he cannot have two names of Baptiſme: alſo the Mannor of *D.* cannot be the Mannor of *S.* and this agrees with the caſe of 29 *Aſſ. vi.* 1 H.7.28. *Feoffments* 30.

Note, a man may make a Feoffment of a Mannor by the name of a Knights Fee, 17 E.3.8. *Feoffments* 59.

The Earl of *D.* being ſeiſed of a Water and a Piſcary, gave them to the Abbot of *D* and his Succeſſors in Frankalmoigne, and in a Writ of Entry brought by the Succeſſor of a Carue of Land, and that the Land demanded is under a ſtream in the water, and adjudged that the Soile did paſſe: As by the Grant of a Pool, by *Marle*, 4 E.3. *Itin Derby*, *Feoffments* 79 See of that 18 *H.6.* Land belonging to an Office ſhall paſſe by the grant of the Office 8 H.7.4.

A man granted to the Abbot of *Rivaux totam partem ſuam piſcariæ de D. uſque S. ſalvo ſtagno molendini ſui*, and agreed that the Soile did not paſſe, but adjudged that notwithſtanding that reſervation, the Abbot ſhould have the fiſhing in the Pool, he being ſeiſed of the ſame after the Grant. And *Wich* ſaid, That when the Pool is within *D.* and *S.* it ſhould be contrary to the Grant to ſave the fiſhing there without ſpeciall words, and eſpecially when it is not alledged, That he uſed to fiſh there before the Grant; And he ſaith, that upon ſuch uſage the fiſhing there doth remain to him, with words *Præter Stagnum Molendini*, &c. 34. *A.* 11. *Aſſ.* 316.

Kirton ſaith, If I grant the profits of a Mill to one, the Scite of the Mill ſhall alſo paſſe. *Finchden*, Not if Livery be not of the Mill: But ſee there, that a woman having the third part of the profits aſſigned to her for Dower, for otherwiſe ſhe cannot be endowed of a Mill, may well be ſaid Tenant by aſſignment, *M.* 45. *E.* 3. *Dower* 50. By ſuch a Grant the Toll, &c. and the Fiſhing, and the Pool ſhall paſſe, 16 *E.* 3. *Formedon* 19.

Rolfe ſaith, If a man grant to me a Rent-charge, by the name of *I. R.* Knight, and I am no Knight, it is a void Grant; but of a thing which paſſeth by Livery it is otherwiſe, which *Martin* agreed.

Strange, If an Obligation be made to me by the name of *I. Strange* of *D.* and there is no ſuch Town as *D.* yet the Obligation is good, which *Martin* agreed, 4 H 6.1. *Brief* 22. ſee 44 E.3.42.

Note, a man ſhall never have an Action upon a recovery where he was miſ-named, if not with averment that he is known by both names, for he ſhall not help himſelf by ſaying, he recovered *per nomen*, &c. for in the Record the name is more materiall then the perſon: But upon a Contract, Feoffment, or Obligation, a man may well have an Action, al-

though he be misnamed by the name, *&c.* for it is onely to be regarded, if he be the same person, 9 *E.* 4. 43. *Variance* 23.

Dower, and demanded the third part of a Mill, the Tenant vouched, and shewed the Deed of binding, which was of a Place, and therefore failed; yet it was not but a place of Land at the time of the Feoffment, and in seisin of the husband, and the Mill afterwards made; but he ought to have shewed the same upon the Voucher, *M.* 31 *E.* 3: *Voucher* 288. See 9 *E.* 3. 39. two acres demanded, the Tenant vouched and shewed a Deed of two Selions.

A man gives twenty acres of Land, *Et unum molendinum, & ego, &c. Warrantiz. omnes prædictas terras cum pratis, pasturis, &c. cum omnibus pertinentiis.* And *Herle* said, that the Warranty did extend to the Mill, and also to a new Mill made afterwards upon part of the Land, the demand was of two Mills, the Tenant did alledge specialty that one of them was not built at the time, *&c.* and rebutted for the whole, *M.* 7 *E.* 3. 50. *Garr.* 45. 1 *H.* 5. 11.

Land was rendred by Fine to *Richard* for life, the remainder to *B.* his Son in tail, whereas *B.* was a Bastard, yet this is a good remainder, if he be known as Son, by *Thorpe*, 39 *E.* 3. 11. *Estoppell* 126. But if he were named in the Fine, Son of *S.* whereas in the Deed he is named the Son of *R.* it is not good, as it appeareth, 11 *E.* 3. *Quid juris clamat* 2.

Præcipe quod reddat, The Defendant said, that the same Demandant by Deed did release and confirm to her husband and her by the name of *Mariot* his wife in tail: And that she was baptised *Mary*, according to the Writ, but called *Mariot* according to the usage of the Country. The Defendant did aver, that *Mariot* is one name in the Country, and *Mary* another, and that she is known by the name of *Mary*; And demurred, because the husband is dead, *&c.* And the opinion of *Finchden*, that the Tenant shall not be helped by this Deed, because another name, but granted that if she were confirmed afterwards by *Mariot*, this is good, but that must be shewed. And *Persey* said, If he had not given a proper name to the wife, yet she should have taken by the Grant. And *Wich* said, That if I do release by a name that I am known by, although I have a proper name in truth, I shall be bound, for it shall be enquired whether I be the same person, as upon an Indictment, *M.* 46 *E.* 3. 22.

Note, Confirmation of the Lord to the Tenant to hold parcell by a lesser Service, goes to the whole, *&c.* otherwise it is of a Release, for that enures by way of Extinguishment, and that onely to the Land comprised in the Deed, *&c. M.* 7 *E.* 4. *Confirmation* 4.

Land shall passe as parcell of a Castle, or of a Town, 5 *H.* 7. 9. *Barre* 143.

XV. *Where the ſtranger to a Deed ſhall plead the Deed which is pleaded by a Privy to it, if it be ſhewed in Court, and take advantage by it, and where the party himſelf ſhall plead a Deed without ſhewing of it, becauſe it is pleaded by him in another Court.*

ASſiſe againſt many Tenants, ſome plead the Deed of the Anceſtor of the Plaintiff to themſelves made with Warranty, and ſome plead the ſame Deed made to others whoſe Eſtate they have, of divers parcels of the ſame Lands: and this was challenged, becauſe that when the Deed ought to be in Court againſt one, the others cannot have advantage by the ſame Deed; but it was not allowed: And note, the Deed was not ſhewed forth till they had all pleaded, *M.* 45 *E.* 3. *Feoffments* 55. So all agreed in an Aſſiſe againſt two, 40 *Aſſ.* 34. 9 *E.* 3. 39. So in an Aſſiſe againſt *R.* and *S. R.* pleaded the Releaſe of the Plaintiff to him, and *S.* pleaded the ſame Deed as Aſſignee of *R.* 11 *Aſſ.* 9.

Scire facias upon a Recognizance in the Kings Bench, the Defendant pleaded a Releaſe which remained in the ſame Court, as denied before, without ſhewing it, 24 *E.* 3. 13. *Scire facias* 129.

A Writ of Entry againſt *A.* who pleaded the releaſe of the Demandant which was denied, and depending that, the ſame Demandant brought *Mortdanceſter* againſt the ſame *A.* who pleaded the ſame Deed in the cuſtody of the Juſtices upon the iſſue in the Writ of Entry, and well, and a Writ was awarded to the Juſtices in whoſe cuſtody, *&c.* to cauſe the Deed to be brought in Court, *&c. E.* 1. *Feoffments* 112.

XVI. *Where a man may confeſs a Deed to ſome intent, and deny it to another, and where a Deed ſhall be good to one intent, and not to another.*

NOte by *Finchden*, If a man be obliged to a Lay-man in a hundred pounds, who makes him an Acquittance of twenty pounds of it, if it be written in the ſame Acquittance words of releaſe of all Actions, which the Lay-man knew not of, in an Action upon the Obligation he may ſafely ſay againſt that releaſe, that it is not his Deed, and yet as to parcell it is his Deed: So he may confeſſe it in part, and deny it in part. *Fitz. Nota & mirum*, that he may once confeſſe it, and at another time deny it, being one Deed, 47 *E.* 3. 3. *Feoffments* 57. *vi C.* 2. *part, Throughgoods caſe, C.* 2. *part Goddards caſe, ac.*

A man makes a Deed of a Gift in tail, and a Letter of Attorney in the ſame Deed to deliver Seiſin; and the party made the Writer to write it

in fee: And in an Aſſiſe by the Donor he pleaded this Feoffment, the other alledged the ſpeciall matter, and that he was a man unlearned, and concluded that it was not his Deed, and agreed a good plea by the Court, as well to the Letter of Attorney, as to the Deed of Feoffment: But it was agreed, if two Feoffments be written in one parchment, of a Lay-man, and his intent is to make the one, and one is onely read unto him, this is good, and as to the other he may plead, that it is not his Deed, becauſe upon the matter they ſhall be as ſeverall Deeds, 30 *E.* 3. 31. *C.* 11. *part, Pygots* caſe, 14 *H.* 8. 26. *vi. Br. Obligation* 73. in fine, 22 *H.* 6 448 *E.* 3. 3.

Debt upon an Obligation which was for performance of Covenants in an Indenture, the Defendant did alledge that he was a Lay-man, *&c.* and the Indenture read unto him with two Covenants, *&c.* which he had performed and delivered, Judgment of the Action: And it was holden a good plea by *Fitz.* and *Bradwell*, becauſe ſeverall Covenants. And he could not plead, not his Deed to the Obligation, but ſhould avoid it by the ſpeciall matter, becauſe it refers to the Indenture. But ſee there, that where the Deed is ſeverall in it ſelf, and as two Deeds made, that is to ſay, upon ſeverall matters, he may well confeſſe it in part, and deny it in part, 14 *H.* 8. 30. *vi. C* 11. *part. in Pigots caſe*, If a Deed doth contain divers diſtinct and abſolute Covenants, if any of them be allowed by addition, Interlineation, raſure, or otherwiſe in any one particular Covenant, the Deed is void in all, for although the Covenants be ſeverall, yet the Deed is but one.

XVII. *Where a Deed ſhall be void by raſure, where not, and where by interlyning.*

RAſure in a Releaſe which is not in a place ſuſpicious ſhall not hurt it, 31 *E.* 3. *Feoffments* 118.

Treſpaſſe for taking his Corne, the Defendant pleaded a Gift of the Plaintiff to his Teſtator, *&c.* the Plaintiff did alledge a Deed of the ſame Teſtator, by which he gave him the Corne back again, and the Deed was raced in the date, yet becauſe the ſame did rehearſe the Gift of the Plaintiff to the Teſtator; The opinion of the Court was, that the raſure in the date, did not hurt the Defendant ſhewing the deed: And ſo there the Plaintiff could not entitle him, by the Gift, without ſhewing the deed, and the iſſue was taken upon the Gift back again, and not upon the deed, *&c. P.* 25 *E.* 3. 5. *Feoffments* 69.

Debt upon an Obligation, it was challenged becauſe the date was raced, ſo it might be made beyond Sea. But an Indenture of defeaſance of the Obligation being ſhewed of the ſame date, the defendant was put to anſwer, *M.* 41 *E.* 3. 29. *Obligation* 1.

In

In debt, the defendant ſhewed an Acquittance of the ſame debt which was raced in the date, and for that condemned, *M.* 44 *E.* 3. 42. *Releaſe* 27.

Thorpe ſaith, If the Indorcement of an Obligation be raced, it makes the deed ſuſpitious, 41 *E.* 3. 10.

Scire facias upon a Recognizance in Chancery, the defendant pleaded a Releaſe, which being denied, all was ſent into the Kings Bench, where the Plaintiff was Non-ſuit, and afterwards ſued forth another *Scire facias* in the ſame Bench, the defendant pleaded the ſame Releaſe being in Court, as denied before: And the Plaintiff alledged raſure in it, *&c.* and had execution by award of the Court, 24 *E.* 3. 13. *Scire facias* 129. *C.* 11. part in *Henry Piggots* Caſe, where a deed is altered by the party himſelf, or a ſtranger in a materiall point by addition, interlineation, raſure, or other means, the deed is void, but if it be altered ſo by a ſtranger without the privity of the party, by any of the waies aforeſaid, in a place not materiall, it ſhall not avoid the deed, 9 *Eliz. Dyer* 261. *ac.*.

In Waſt by the Heire of the Conuzee of a Wood felled; the defendant pleaded a deed of the Conuzor before, *&c.* by which he granted that he might cut and ſell, and the deed was raced in one place, but becauſe it could not be perceived what was written in that place before, the Plaintiff was put to anſwer to the deed, *&c. Fitz.* Note that Bar, for ſome ſaid he ſhall be put to his Writ of Covenant, *&c.* 30 *E* 3. 8. *Bar* 267.

Scire facias to execute a Fine by him in the Remainder, the Writ was abated for one name raced, 45 *E.* 3. 18 *bar* 590.

Debt by an Executor, he ſhewed the Will, where the word, Executor, was raced, yet good, for it appeareth in the Regiſtry: And the defendant alſo ſhall traverſe if he be Executor, notwithſtanding the Probate, *&c.* 22 *H.* 6. 52. *Executors* 17.

Debt upon an Obligation by *I. T.* Grocer of *London*, and (Grocer) was interlined in the Obligation, yet the Writ good by award, by *Thirne* And this is to the Action, as raſure againſt the opinion of *Hankford* and *Hill*, *Quere* 14 *H.* 4. 19. *variance* 47.

XVIII *Where a Deed ſhall be cancelled, where not.*

DEbt upon an Obligation, the defendant pleaded a Releaſe of all Actions, *&c.* and at the day of the Inqueſt he made default, for which the Plaintiff recovered according to his declaration: And the Obligation was cancelled, becauſe he recovered in a Mannor on the confeſſion of the defendant, 45 *E.* 3. 11. *Condemnation* 14.

It is there ſaid, if the defendant had denied the Obligation, and it had been found againſt him, now ſhould not (*it*) have been condemned, becauſe he might have an Attaint. But ſee 10 *E.* 3. 24. That Attaint doth

doth not lye in the caſe, but that the Obligation being denied and found for the Plaintiff, it ſhall be cancelled, *Judgment* 207. 9 *E.* 454. by *Littleton.*

And if in Debt upon an Obligation, the Defendant plead an acquittance, which is found for the plaintiff, the Obligation ſhall be cancelled, and pendant that iſſue, the Obligation ſhall be delivered to the Plaintiff, 11 *H* 4. *Debt* 114.

Debt upon an Obligation againſt Executors, who plead, fully adminiſtred, and this is found for him, the Obligation ought to be cancelled: See that by that plea it is confeſſed, and the redelivery to the party holden Error. *Hulls* ſaid, where a deed is denied and found for him who alledgeth it, it ſhall be cancelled, not if it be found againſt him, for he may have an attaint, *P.* 7. H. 4 39. See contrary in the laſt point, H. 11 *E.* 3. *Judgment* 125.

In a Plea of Land, the Tenant pleaded a Releaſe, which was found falſe, and there were witneſſes in Court, and the Court would not damn the deed, but Sir *George Scrope* did otherwiſe, *M.* 12 *E.* 3. *Judgement* 164.

One *W.* who was taken upon a Statute Merchant ſued forth an *Audita Querela* upon an Acquittance, and at the day of the Enqueſt was Non ſuit, and the deed was not cancelled, for he may have a new *Audita Querela*, by *Wilby*, 22 E. 3 4. *Judgment* 183.

Debt upon an Obligation, the defendant ſaith, that the plaintiff had recovered upon the ſame obligation by plaint before the Mayor of *N.* and had execution *&c. Schard*, wherefore was it not cancelled then, and you ſhew no acquittance, for which it was awarded that the plaintiff ſhould recover, and ſue now that the deed may be cancelled, 17 E. 3. 24. *Bar* 246.

XIX. *Where a Deed ſhall be ſaid ſufficient to maintain a Formein the remainder.*

A Formedon in the Remainder, as right heire of *J.* the Son of *P.* of the body of *Jane* the daughter of *J. Candy* begotten, and ſhewed a Deed, by which the remainder was given to *J.* ſon of *P.* begotten of the body of the daughter of *J. Candy*, and did not name her proper name, yet adjudged a ſufficient Deed to maintain this Writ, for daughter is a good name of purchaſe, 30 *E.* 3. 18. *Feoffments* 64.

Formedon in remainder, the Demandant ſhewed a Deed by compulſion, which proved the Land given to *R.* and *S.* to have and to hold to *R.* for life, and after his deceaſe to *S.* and his heirs, and for that challenged, becauſe the Demandant as heir of *S.* ſuppoſed by the Writ, and counted that *R.* was Tenant for life, the remainder to S. yet the Deed was holden ſufficient by *Herl*, and that their eſtate ſhould be according to the limitation in the *Habendum*, *M.* 8. *E.* 3. 53. *Feoffments* 73. For-

Formedon in the Remainder upon a Debt, which was *revertantur*, where the writ was *remaneant*, yet good as to that, and the Tenant cannot ſay, that he did not give by that deed, but he might well plead that nothing paſſed &c. 10 *E.* 3. 1. *Feoffments* 76. and therewith agrees 8 *E* 3. 28. *Feoffments* 61.

XX. *VVhere a Deed ſhall be void by words compriſed in it, and of no value, although it be delivered as his deed, and where by ſuch words part of the grant ſhall be abridged, and where ſubſequent words ſhall be void; and of exceptions in a deed.*

W. Did enfeoff *J. Jode*, who made a Charter of Feoffment to the ſame *W.* and a Letter of Atturney to *R.* to deliver Seiſin after his death, who by force of the Warrant of Atturney delivered Seiſin to *W.* in the life of *J.* who was preſently after upon the Land, claiming nothing of his former eſtate. *W.* did enfeoff divers of the Pariſhioners for the amending of their Church, *J.* was not upon the Land at the time of the ſeiſin delivered, but did aſſent to it, and afterwards the Pariſhioners leaſed the Land to a ſtranger for life, upon whom *J.* entred, and the better opinion was, that his entry was lawfull, for the Livery was a diſſeiſin to *J.* as *Fitz.* renders it, but *Wych*, ſaid not, but that *W.* was Tenant at Will by force of the Deed of Feoffment and Livery, although it was not according to the warrant of Atturney, 40 *Aſſ.* 38. *Feoffments* 89. *vide* 18 *H.* 6. 16.

A man granted ten pounds of Rent, in his Mannor of *D.* to perceive ſo much by the hand of ſuch a Tenant, and ſo much by the hand of ſuch a one, *&c.* and although that the whole ten pounds was ſo limited to be taken, yet it was holden that the Demeſne Land which was charged to the Aſſiſe by the premiſſes of the Deed, was not diſcharged after, and ſo the party ought to bring an Aſſiſe, &c. 7 *E.* 3. 9. *Aſſiſe* 132. and ſee 15 *Ed.* 3. 3. *Charge* 9. where upon ſuch a deed, the Aſſiſe was awarded, as of Rent iſſuing out of the whole Mannor, See of this matter, 1 *E* 3. 21. 5 *E* 3. 66. 15 *Aſſ.* 11.

A enfeoffeth B. to hold by ſix pence for all ſervices. *Et ex illis* 6 d. *ſcutagium ſolvi debet quando evenerit, quantum pertinet ad tantum terræ*, and adjudged that it was but Socage, for there is no ſufficient word in Law to reſerve eſcuage, 27 *Aſſ.* 52. *Aſſ.* 258. and it was afterwards argued, 31 *Aſſ.* 30 *Aſſ.* 307. and the opinion as before, and there *Mowbray* ſaith, If a feoffment be made to hold by a penny, and by eſcuage, for all ſervices, yet it is but Soccage. But it is agreed there, that if upon ſuch feoffment as above, *Salvo forinſeco ſervitio*, for doing the ſervices due to the cheif Lord, the Feoffee ſhall hold in Knights ſervice, if his Feoffor held ſo o-

ver-

ver of the Lord Paramount, and according to that iſſue was taken upon the holding over, 25 *E.*3.10. *Bar* 21. 40 *E.*3.10.

A man leaſes two acres rendring for one acre 10 *s. per annum*, to him and his heirs; and for the other 10 *s.* ſpeaking nothing of his heirs, (ſee there appears no certainty in the Reverſion, yet it ſeems to be admitted there, that ſten ſhillings are extinct by the death of the Leſſor: See there, that ſeiſin of him who claimeth as guardian, although there was no ward of Right, is ſeiſin of the heir, *P.*11 *E.*3 *Aſſiſe* 86

A man granted to the Abbot of *R. Totam piſcariam in aqua de Teſſe, &c. ſalvo ſtagno molendini ſui*, which was within the bounds, in which the fiſhing was granted, and adjudged, that by that *Salvo*, the courſe of the water neceſſary for the mill, is reſerved; but not the fiſhing in the ſame poole, for here is not a diſtinct fiſhing from the water in the poole before, when he himſelf was ſeiſed of all the water, &c, 34 *Aſſiſe* 11. *Aſſiſe* 316.

A man granted an Annuity of 4 l. unto the husband and wife, and if ſhe did ſurvive, that ſhe ſhould have 40 s yet it was holden by *Herle*; that ſhe overliving ſhould have the 4 l. becauſe there was no negative words, that ſhe ſhould not have more, 8 *E.*3.23. *Aſſiſe* 143.

I gave a Carue of Land to *R.* with *A.* his daughter in Frank marriage, *Habendum ſibi & hæredibus, vel cuicunque aſſignare voluerit, reddendo per annum* 12 *d. eidem J. & hæredibus ſuis pro omnibus ſerviciis*, *A.* died without iſſue, and afterwards *R.* let the Land to a ſtranger, againſt whom *J.* brought a writ of Entry, and adjudged that the ſtranger ſhould hold the Land during the life of *R.* and that after his deceaſe the Land ſhould revert to *J.* and to his Heirs, 13 *E.*1. *Formedon* 63.

A man leaſeth for years by Deed, and grants that if he alien the Term or dieth within the Term, that the Leſſee ſhall have for life and Livery, and Seiſin made accordingly, and afterwards he grants the Land by Fine to *Pleſington*, who ſueth a *Quid Iuris clamat*, the Leſſee claims Freehold by the Deed, and adjudged that he ſhall forfeit his eſtate, becauſe the condition is againſt Law; as to the alienation. But good in the other point, and he might have ſaved that advantage by attornement with proteſtation. Alſo a condition, that if he be ouſted by the Leſſor, during the Term that he ſhall have Fee, is good, 6 *R.*2. *Quid juris clamat* 20. 7 *E.*3.45.

XXI. *Where a Deed bearing Date in* Wales, Scotland, *or beyond Sea, is void, where not.*

A vowry for a Rent-Charge in another place then the plaintiff declared, by a ſpecialty bearing date in *Wales*, and *Hil* ſaid, that the Deed ſhall be entred, and that if the iſſue taken upon the place be found with the avowant, he ſhall have return, *H.* 20. *E* 3 *Avowry* 127.

Debt

Debt againſt a Prior alien, and declared, that he with the aſſent of the Covent bound himſelf to the Plaintiff, and becauſe the Deed bore date in *England*, and by no intendment the Covent could not be there, it was thought by all the Councell, and by all the Juſtices, that the Deed was naught, *C.* 13 E.3. *Abbe* 12.

An Aſſiſe of a Corodie againſt a Prior alien, Farmer of the King in time of Warre, and the Deed bore date beyond Sea, but the Seiſin and Diſſeiſin were found. Alſo the Atturney of the Prior had confeſſed the Deed, alſo the Deed better then if it had born Date in *England*, where the Covent was not, as it was touched according to the Judgment, 13 *E.3.&c.A.*27 *Aſſ.*43. *Aſſiſe* 255. *vide* 14 *E.*3. *Abbe* 11.

Debt upon Obligation dated at *Barwick*, and the ſame being challenged, the Plaintiff took nothing by award of the Court, *M.* 2.*E.*2. *Obligation* 15.

A Grant of King *Henry* the fifth, bearing date at *Burdeaux* in *France*, was pleaded and admitted good, and ſo it was cofirmed by the King, and by the Parliament, 39 *H.*6.34. *Grants* 15.

XXII. *Where a Deed, Record, Letters patents of the King made before time of memory, ſhall be good at this day. &c*

NOte a Deed of King *Henry* 2. made before that he was King, is to no purpoſe, but for Evidence, nor with Confirmation of it after he was King, but his Deed when he was King is holden good becauſe of Record, 12 *H.*4 23. *Avowry* 58.

A Charter of King *Henry* the firſt admitted good, 38. *Aſſiſe* 22. *Grant* 1.

The King ſhall not avow againſt a Deed of his Anceſtor, before time of memory, by *Skreen*, 12 *H.*4.24.

An Appropriation by the Charter of *William* the Conquerour, and admitted good, as to the time, 7 *E.* 3. *Quare impedit* 19. and 29 *E.*3.21. the Charter of King *Henry* 2. admitted good and 3. *Itin. North.* the Charter of King *Hen.* 1. to be quit of Pontage, was admitted good, *Aſſiſe* 445.

A Charter of *William* the Conquerour, of Conuſans *&c.* and with allowance alledged in the Kings Bench, and in another Aſſiſe, was allowed in an Aſſiſe, See the Grant, 12 *H.*4.12. *Conuſans* 21.34 *Aſſ.*14.

But ſee 9 *H.*7. 10. By the Juſtices adjudged, that Conuſans ſhall not be allowed upon ſuch Charter, without allowance alſo alledged in *Eyre. Conuſans* 16. *vide* 26. *Aſſ.*24. *Conuſans* 57. 14 *H.*6.12.

And ſee 1 *E.*4 6. and 2 *E.*4 21. and 24. agreed that the Charter of the King, nor no other Record made before time of memory, is now worth any thing, and therewith agrees 8 *H* 6.4. and 19 H.6.75. by *Newton*, and 9.H.7.10.

XXIII. *Where a Deed or Obligation in the third person or first person is good.*

NOte by the whole Court, that an Obligation made in the third person is good, (s) *Memorandum* that *T.B. dedit I.S.* 100 *s. solvend. &c. In cujus rei &c. sigillum suum apposuit.* So of a deed, *Præsens scriptũ testatur* &c. and as well as it is of an Indenture, *P.* 8. *E.* 4. 5. *Obligation* 9. But such an Obligation made in the third person was adjudged void, 40 *E* 3. 2. and therewith agrees *Hanckford*, 2 H. 4. 10. and he saith that such an Obligation is void by the Statute of 38 *E.* 3. *cap.* 4. See 22 *E.* 4. 22. I promise to pay, or I shall pay, sufficient words of an Obligation.

XXIV. *Where the Seal of the Deed shall be sufficient, where not.*

DEbt upon an Obligation of 20 l. which was endorsed to be payed at two dayes *&c.* and of the first day the Defendant shewed an acquittance, and that he was ready at the other day. *Hulls*, the Acquittance hath no print of any Seal, and to the rest he was not ready *&c. Thirn.* The issue shall be upon the one, for each goeth to the whole *&c.* 14 H. 4. 31. *Double plea* 69. So the acquittance without a sufficient Seal is nothing worth.

A *Scire facias* against a Prior for an annuity recovered, he demanded *Oyer* of the deed, and had it by the opinion of the Court, and the Seal was wholly bruised, yet because it was an ancient Deed, and part of the Seal did remain, and also the Seal lately broken, it was holden a good deed, *M.* 6 *R.* 2. *Monstrans de faits* 159.

XXV. *Where one Jointenant or coparcener shall enfeoff his companion, and where it passeth by Confirmation.*

NOte by *Newton* clearly, that one Joint-tenant cannot enfeoff his companion, because he cannot make Livery, but if it be by deed, perhaps it shall enure by way of Confirmation, H. 22 H. 6. 42. *Feoffments* 11.

A Deed of Feoffment, which hath also the word Confirmation may be also used, as the party will, but if he once use it as a Feoffment, he shall never after use it as a Confirmation, 21 H. 6. *Feoffments* 102. *vide* 14 H. 4. 38.

Martin saith, That one Jointenant may enfeoff his companion, as by Lease and release in his possession. *Paston* denies it, and saith, that that is but an extinguishment of his right, for the Land doth not pass, 14 H. 6. 10.

One

One Parcener may enfeoff the other by Livery, and the Land ſhall paſſe, and ſhall be vouched, 10 E 4.3. 17 E 3.46. *Counterplea of Voucher* 41.

One Copareener granted her moiety of the Advowſon to the other, this is a good grant, and may be averred good without deed.

XXVI. *Where a Feoffment, &c. ſhall be made to the King by deed enrolled, or by him to another, where not: And of gift of Goods to the King.*

NOte by *Danver*, If I make a deed of Feoffment of my Land to the King, and deliver it to him, or deliver the ſame into the Exchequer, or to his Coferer, the right of the Land is in the King, although the deed be not enrolled. The ſame Law of a gift of Goods, which the Court granted; and he held clearly that a gift of Goods to the King is good without deed, 37 *H.*6.10. *Feoffments* 18. 21 *H.*7.21. 49 *E.*3.11. 40 *Aſſ.*21. *acc.*

Note, the King cannot be enfeoffed by deed without enrolling of it, for Livery cannot be made to him. Alſo he cannot be ſeiſed to anothers uſe: And if the husband and wife would acknowledge a deed in the Chancery, it cannot be received, no more then a Fine in that Court, by *Markham*, 5 *E.*4.7. 7 *E.*4.16. *Feoff.* 21. 1 *H.*7.29. *and* 31. *ac.* 4. *Car. in B.R.* Ten. in tail, in remainder, grants his reverſion by deed inrolled to the King: It was holden, that although there was no Seiſure nor Office found, yet the deed being inrolled and certified into the Chancery, did ſufficiently entitle the King. 5 *E* 4.8. 14 *E.*4.12. *b. Plow. Com.* 31. in *Colthirſts* caſe, *ac.*

If a man leaſe his Land for life, the remainder to the King, it ſhall not paſſe before the deed be enrolled, and then it ſhall paſſe *ab initio, &c.* 1 *H.*7.29. *Feoffment* 30. *vi.* 8 *H.*7. 11. A Bailiff ſhewed that a Leaſe was made for life, the remainder to the King in Fee, and prayed in aide of the King, and a *Procedendo* granted.

A deviſe of Goods to the King without a Teſtament, or Deed, is good, and he ſhall have them in whoſe hands ſoever they come; and ſo of Lands which the Deviſor had to Farm, 40 *Aſſ.* 35.

A Reverſion deviſed to the King being found by Office, is good: As a Condition by Verdict found at large in an Aſſiſe, but the reverſion ſhall not be found *per* Aſſiſe, without ſhewing of a deed; And the King ſhall not have advantage of a Contract made to a man who is outlawed found by Office, as *Fitz.* reads it, againſt 49 *E.*3. *Grants* 52. 49 *Aſſ.*

XXVII. *Where by Livery and Seiſin made in one Deed the whole ſhall paſs, and where the Reverſion and Remainder by ſuch Livery; where by the Livery, not by the deed, and where more or leſs ſhall paſs then is contained in the deed of Feoffment, and where a Remainder, or a Reverſion ſhall paſs by Livery.*

IF I make a Leaſe for years of an acre, and make a Feoffment of it and another acre, and make Livery in the other acre in the name of both, the acre in Leaſe ſhall not paſs without Attornment, 7 *E.* 4. 20. *Feoffments* 22. *vi. C.* 2. part, *Beſſeſworths* caſe, the Livery is void for the whole, 28 *H.* 8. *Dyer* 18. 29 *H.* 9. *Dyer* 33. 11 *Eliz. Dyer* 283. 21 *Eliz. Dyer* 362. *ac.*

And by Livery of two parts of a Mannor, the Reverſion of the third part ſhall not paſs, although it be compriſed in the deed, 22 *E.* 3. *Darrein preſentment*, 1. 18. *Aſſ.* 2. And note, that the Entry in one acre is not an Entry in the whole, although it be made in the name of the whole, if he hath no right of Entry, 39 *Aſſ.* 16. The ſame Law of Feoffment; but by ſuch Feoffment all ſhall paſs in the ſame County, not in Leaſe, 13 *E.* 3. *Eſtopell* 127. *Lit. fol.* 180.

A man was ſeiſed of the Mannor of *D.* and Leſſee for years of other Lands parcell of the Rectory of *D.* all in date, he bargained and ſold all his Mannor of *D.* and all his lands in *D.* but before the Bargain he made an under-Leaſe of his lands, parcell of the Rectory in *D.* and afterwards he levied a Fine of all his Mannor and all his lands in *D.* It was adjudged in *Fancet*, and *Anderſons* caſe, at *York* Aſſiſes, 1633. by *Damport* chief Baron, that the Fine did not paſſe the leaſed lands, which would have paſſed by Livery, although it had not been made upon the leaſed lands, but the other lands.

It is ſaid 9 *H.* 7. 25. If a man hath one acre for life, and another acre in fee, and maketh a Feoffment of both, and Livery in that in fee, that the other alſo ſhall paſs, which ſhould not, if it were a Leaſe for years.

Choke held, that a Feoffment of him in the Reverſion and Livery, without putting out of the Termor ſhall be good, 33 *H* 6. 41. 2. *Aſſ.* 2. againſt 7 *E.* 3. 23. *Feoffments* 70. 2 *E.* 3. *Feoffments* 78. that it ſhall not paſs, yet there the Termor paid the Rent to the Feoffee. *ac.* 11 *H* 4. 19. 19 *H.* 6 56. But if the Leſſor for life or years puts out the Leſſee and makes a Feoffment, and the Leſſee doth re-enter, the fee doth remain in the Feoffee, 18 *E.* 3. *Feoffments* 162.

So where the Iſſue in tail recovers againſt the Diſcontinuee of his Father who hath Fee, *&c.* 14 *H.* 4. *Feoffments* 45. And where there is Tenant for life, the Remainder to a ſtranger for life, the Remainder to the Tenant in fee, if the Tenant grant his Eſtate to another and his Heires, the

fee

fee ſhall well paſs, although the Eſtranger in the Remainder ſurviveth him, 44 *E.* 3. *Aſſ.* 56.

A gift of goods or of lands to two, and delivery to one is good for both, and delivery of them to another afterwards, is void, 18 *H.* 6. 9. And it ſeems good for all, being to one in the name of all, without a Deed of the Feoffment, with their agreement as a remainder by livery to the Leſſee for years or life, but not without agreement, where it is upon a Leaſe for life, 18 *E.* 3. 12.

But it is holden not good, 15 *E.* 4. 18. without Deed, but that thoſe who are abſent at the Livery may diſagree in *pais*, and thereby every ſtranger ſhall have his Action Paramount, without naming them, 7 *E.* 47 *contr.* and that they ſhall not ſo diſagree, and therewith agreeth 13 *R.* 2. *Joynt-tenants* 9.

FEOFFMENTS, AND LEASES.

I. *What things ſhall paſs without Deed, and where the Action or duty ſhall be extinct without deed.*

AN Advowſon in groſſe from one Coparcener to another ſhall paſs without deed; So of a Rent granted for equality of partition, and a compoſition to preſent by turnes to an Advowſon, they ſhall be good without deed, *H.* 11 *H.* 4. *Feoffments* 40. And upon partition of a Mill and Meadow, an agreement that ſhe which hath the Mill ſhall have a way to the Meadow is good without deed, 21 *E.* 3. *Monſtrans de faits, vi.* 20 *E.* 3. *Monſtrans de faits* 72. 28 *H.* 6. 2. *ac. vi.* 18 *Eliz. Dy* 340. *Driam* betwixt *Topit* and *Pan* a way for making partition without deed, 19 H. 6. 25. *ac* 11 H. 4. 61. 44 *E.* 3. *ac.* 21 E. 3. 2, *Nuſans* 2. 19. *E.* 3. *ibid.* 3. *ac.* 47 E. 3. 22. 9 *Aſſ.* 11. 3 H. 42. *vi. & quere.*

Dower

Dower *ad Oſtium Eccleſiæ*, is good without deed, even of lands which are in another County, if they be within the View; But of Dowment *ex conſenſu patris*, there ought to be a deed proving his conſent, 40 E. 3 43. *Feoffments* 48. *Lit*: 8. *b. ac.*

Quare Impedit by the Feoffee of a Mannor, to which, *&c.* the defendant ſaid, that the Anceſtor of the Plaintiff did enfeoff him of an acre parcell of, *&c.* with the Advowſon by that deed.

Herle, The Iſſue ſhall be, whether he granted, and the deed is not materiall, *&c.* 5 *E*: 3. *Feoffments* 73. and 43 *E*: 3. agrees. But where the huſband makes ſuch Alienation of the right of his wife, ſhe may well preſent without recovery of the acre: And there it is not ſpoken of any deed, *P.* 22 *E*: 3. *Feoffments* 116. 22 *Aſſ*: 7. 43 *E*: 3. 26.

It was holden that one Coparcener might grant her part of an Advowſon to the other without deed before partition, or after, for it was there holden that it ſhall paſs without deed, becauſe the Grantee ſhall not ſhew the Deed after that he hath once preſented, and the Preſentment doth not gain the poſſeſſion by the one Parcener againſt the other. *Quare* of that, *M*: 20 *E*: 3. *Monſtrans de faits* 72.

An Apprentice cannot be made without deed, for which cauſe he ſhall not be diſcharged without deed, *H*: 21 *H*. 6. *Monſtrans de faits* 116. and *M*: 6 *E*: 4. *Bar* 89 contrary, becauſe he cannot ſerve him at his Will.

Leaſe by the husband and wife good without deed or fine during the Coverture, but if ſhe after alone bring *Terminum qui præteriit*, it ſeems it will not lye without a deed, becauſe he may make the wife a party, *P.* 7 *E*: 3. *Monſtrans* 10.

Account againſt a Receiver, it is no plea that the Plaintiff granted him to retain for a certain debt which he owed him, but he was awarded to account, 11 *H*. 4. 18. and 14 *H*. 4. 21. and ſee 16 *E*. 3. *Accompt* 53. which in ſuch caſe *Thorpe* ſaid, Shew us a deed of the Grant to retain, but there the Plaintiff did maintain his Writ, and 28 *H*: 6. *Bar* 49. upon ſuch plea, the Defendant was awarded to account without ſpeaking any thing of a deed, *&c.*

An agreement was betwixt the Obligor and Obligee upon account made; That the Obligor ſhould retaine the money for the arrearages which the Plaintiff owed him, and it was holden a good bar without deed, *T*. 12 *R*: 2. *Bar* 243. So in Debt upon a Contract, 33 *H*: 6. 48. *Debt* 56.

A Rent parcell of a Mannor ſhall paſs without deed, and without attornment, but there the Plaint was abridged for want of Attornment, 37 *H*: 6. 26.

One Coparcener leaſed her part to the other, before partition for years without deed, and a good Leaſe, 21 *E*: 3. *Partition* 9. 2 *H*: 7. 5. *p.* 17. *ac*, 21 *E*: 3. 2. *pl*: 9. 21 *Aſſ*: 1. *ac*. 21 H: 6. 11.

II. *Where*

II. *Where a Leaſe, or Deviſe made by a Feme-Covert is good, and where a Feoffment during the Coverture.*

ACcount againſt *A.* as Bayliff, that upon debate betwixt the Plaintiff and his wife, by the agreement of friends of the Plaintiff, the Plaintiff did aſſigne the Land to the wife for her livelyhood, and that the wife did leaſe the ſame to him, and the Plaintiff was driven to anſwer to the leaſe of his Wife, 47 E:3.18. *Account* 42.

If a Feme-Covert do alien her land when her husband is gone out of the Country, yet this is void, and a Diſſeiſin to the husband, 9 *E.* 3. *Feoffment* 75.

If my wife go away with an Adulterer, and levieth a Fine, I may well enter, and thereof the Heire of the wife ſhall have advantage. But if my wife take another husband. the wife nor her Heire ſhall avoid it.

Gaſcoigne, The Fine is void againſt her being named wife of *T.* where ſhe is not his wife, 7 H:4 43. *Scire facias* 65.

If a Feme-covert levy a Fine upon a Render, ſhe ſhall not avoid it, although that ſhe and her husband continue ſeiſed after the death of the husband: But if a *Scire facias* was ſued againſt the husband in tail of his Wife, and the Husband made default, ſhe ſhould be received to avoid it, 17 *Aſſ*:17 *Eſtoppell* 135. But the entry of the Husband upon the Counzee of the Wife ſhall avoid the Fine for the whole, 9 H 6.34. 18. H.6.27. 32 H.6.31. *vi C.*101. *part*, 15 E.4.8. 14 E: 45. A Feme-covert ſhall not be barred of her Inheritance, but when ſhe is examined in due courſe of Law. *vi.C.*10 part, in *Portingtons* caſe, the Fine ſhall bind the Wife and her Heirs, if the husband do not enter and avoid the Eſtate of the Conuzee, becauſe ſhe was examined and had power of the land.

The Deviſe of a Feme-covert in fee to her Husband, is good, 31 *Aſſ* 3. but ſee 3 E.3 *Deviſe* 12. that ſuch a Deviſe is naught. But 10 H.7. 20. A Feme Executrix ſold the land to her Husband, and the Feoffees ought to make the Eſtate accordingly. But there the Deviſe of the Wife *Ceſtui que uſe*, that the Feoffees ſhall make an Eſtate to her husband was holden void by all the Juſtices, except *Tremaile*: But the Wife *Ceſtui que uſe*, ſhe and her Husband ſold the land, and ſhe received the money, and after the death of the Husband the Vendee had a *Subpœna*, 5 E:4.18.18 E 4.11. *Fitz: Deviſe* 15. *vi. old N:B* in the Additions of *Ex gravi querela*, &c. that the Deviſe is not good.

Nota, there the Deviſe was ſaid to be by uſage in *Notingham*, 3 E. 3. *Itin: Not:* 12.

29 E:3. A woman ſeiſed of Land deviſable, took a Husband, and had Iſſue, and deviſed the land to the Husband for his life, and died. Waſte was brought againſt him as Tenant by the Curteſie; and it was there holden, that he was not ſeiſed of the land by the Deviſe. See more by the Statute of 34 H.8. *cap*: 5. ſuch Deviſe of the Wife is void.

Paſch:

Paſch: 25 *Eliz: in C:B: Skipwiths* caſe, A Cuſtome was alledged, that *Qualibet famina viro coperta potuit* deviſe her Copyhold lands to her Husband, and ſurrender them in the preſence of the *Reeves*, and ſix perſons, and adjudged not good Cuſtome, becauſe of the incertainty, and againſt reaſon.

A Leaſe by the Husband and Wife without Deed, and during the Coverture, ſhall be ſaid the Leaſe of them both, or after, 7 E:3. *Monſtrans de faits* 10 6H.7 3.

III. *Where a man ſhall be Tenant at ſufferance, and what Act ſhall determine a Leaſe at Will, and where a Leaſe at the wil of the King is good.*

A Leaſe at Will is determined by Outlawry of the Leſſee in Treſpaſs, 9 H:6. *Feoffments* 93. yet the Eſcheator ſhall not ſeiſe the Lands, but the profits, and if he do, he is a diſſeiſor, 9 H. 6. *Aide de Roy* 17.

Leaſe at Will of a Piſcary by the Biſhop by whoſe death the Temporalties are now in the Kings hands; and aid of the King in Treſpaſs, 4 H. 6. Aide of the King 10. 3 H:6. 11, 12. ſeems contrary in the ſame caſe, and that ſuch Tenant ſhall not have aid but of his Leſſor: Otherwiſe it is of Tenant at Will by Cuſtome, *&c. P:* 11 H:6 Aide of the King, 22.

And although that ſuch Leaſe is determined, by the death of the Leſſor, yet in pleading againſt a ſtranger in Treſpaſſe, it needs not to ſuppoſe his life, 10 *E:*4. *Replication* 34 *vi.* 27 H. 8. 34. 4 H:6. 2. 33 H:6. 37 H:6. 8. 11 H. 4 91. 21 H 6. 38. Tenant at Will ſhall not have aid of his Leſſor. 9 *Eliz. Dyer* 258. 22 E. 4. 28. *vi.*

It was agreed that Tenant at Will ſhall not cut under-woods without licenſe, 2 E. 4. 26.

Vi: 21 E:4, 5. ſeems contrary, *vi:* 12 E. 4. 6. 8 E:4. 7. he cannot cut under-woods, if not by Cuſtome, *per Lit: quod nota*, and by him, by the Common Law, Waſte did not lye againſt him: So by that Law he could not cut Woods.

If I leaſe a Mannor at Will to which Common is appendant, and put in my Beaſts in the Common to uſe it, it is a determination of my Will, 14 E. 4. 6. So if I ſell Trees there growing, as it ſeems by that the Vendee ſhall juſtifie the Entry into the land for them, *&c* 35 H. 6. 29.

Vi. 21 H:7. 34. 13 H:7. 13. If Tenant at Will be diſtrained for his Rent arreare, and his Cattell impounded upon the Land, it is a determination, of the Leaſe, and a leaſe at Will may be determined by commandment.

The Leaſe ſhall be at the Will of each party, and therefore if it ſaith, at the Will of the Leſſor, that word (*the Leſſor*) is void, for the Leſſee alſo ſhall leave it at his Will, *M.* 20 *E:* 4. 9. and becauſe ſuch Leſſee hath ſuch liberty, the Leſſor ſhall have Treſpaſſe againſt him, ſo as if he depart;

20 *Edw.*4.9. But Leſſee at Will cannot grant over his Eſtate, 12 *Edw.* 4.5.

9 *E.*4.1.18 *H.*6.1.*acc.* 39 *H.*6.18. A Leaſe at the will of the Leſſee or a ſtranger, is void; for then he ſhould have a free-hold without Livery but 35 *H.*6 63. a Leaſe at the Will of the Leſſee with Livery is an eſtate for life, *contr.* if without livery.

Tenant at ſufferance ſhall take Cattell damage Feaſant, and maintain treſpaſs, if the other plead not guilty; but if he plead ſpecialty, the other cannot make title, 4 *H.*7.3. Tenant at will, 10 *H:*4.2 *E.*4.6.*acc.* 35 H.6.24.

42 *Ed.*3.25. Tenant at will by cuſtome, ſowes the land, and before ſeverance, will not do his ſervices, the Leſſor enters, the Leſſor ſhall have the Corn and not the Tenant at will.

Leſſee at Will ſhall preſent to an advowſon, if the Leſſor will ſuffer him, 33 *H.*6.34. and the Leſſor ſhall not put him out, after the Land is ſowed with corne, 35 *H.*6.29. *vi. C.*5.*part Olards caſe,*

If the King leaſeth by Patent to hold at the Will of the King, rendring rent at the Exchequer, the Leaſe is at the Will of the King only, 8 E.2. *Dower* 169. 42 *Aſſ.*22.

A Releaſe to Tenant at will is good, but not to Tenant at ſufferance, 2 E 4.6.8 E:4 16 *ac.*21 H.6.37. 27 H.6.*Releaſe* 6.*ac. Lit* 107.*Pl* 461.*ac.* Yet ſee 22 E.4.38. by *Huſſey*, That Tenant at ſufferance hath a fee in law, and a Writ of *Ad terminum qui preteriit*, lyeth againſt him, which is a *Precipe.*

See 22 E 4 13. and 14. Treſpaſs, *Vi & armis* lyeth not againſt Tenant at ſufferance, becauſe he came not in firſt by title, *vi. Plow, Com.* 13.7 E 4.6. 21, E.4.76. *Br. Treſpaſs* 365.

If Tenant at Will be put out by a ſtranger, the ſame ſhall not determine the Will of the Leſſor, yet by his entry, the freehold is not re continued to the Leſſor, 38 H.6:27. But if the Leſſor releaſe, to ſuch a Diſſeiſor, there his will is determined.

9 E:4:33: *Quere* If upon the entry of the Leſſee, the Leſſor ſhall not have Aſſiſe againſt a ſtranger, becauſe the poſſeſſion of the Leſſee doth continue the land in his Leſſor.

IV. *Where a man ſhall have a free-hold determined at his own Will, and where at the will of another, and where at a certaine time till monyes levied, or till ſuch a Tree ſhall grow, &c.*

TLeaſed lands to *B. Dummodo ſolverit* unto the Leſſor during his life, 20 *l: Per annum*, the one hath free-hold in the Land, the other in the rent, all determined at the will of the Leſſee, if he ceaſe to pay the Rent, *P* 3.E:3: *Aſſ.*172.

The Plaintiff in an Aſſiſe took an eſtate for life upon condition, that the Tenant acknowledge a Recognizance to him, or elſe he did not agree to it, but that all ſhould be void: *Stone*, He hath abated the Aſſiſe, for although the condition be not performed, the Eſtate is not void, without entry, alſo the condition is not good, becauſe it doth not expreſs that he ſhall re-enter, if &c. *M.* 10 E. 3: *Aſſ.* 163:

Aſſiſe of Rent by grant of two markes, untill ten markes are payed, and the Defendant tendred the rent, *M.* 33 Ed. 3: *Aſſ.* 367: But it ſeems ſuch a grant untill ten markes levied, ſhall be but a Term, and ſo like to the firſt caſe, but no deed was ſhewed, proving the determination, ſo it could not be found, 33 *Aſſ.* 15: *verdict* 42: But a Feoffment of lands untill he hath levied 20 *l*: makes a good free-hold, *P*: 21 E: 3: *Aſſ.* 102.

A Leaſe for years ſo long as ſuch a tree ſhall grow is good, *Quere*, for it is ſayd, That a Leaſe ſo long as *T*: ſhall live, is but a Tenancy at will without Livery, 14 H: 8: 12: But a feoffment ſo long as *T*: ſhall live, or ſuch a tree ſhall grow, is a good fee, 27 H: 8: 29: 10 E: 3: *Account* 56: and where a Feoffment is made for years, the heir ſhal have it after the death of his Father, 11 *Aſſiſe*: *Aſſiſe*: 197: 8 H: 4: 15: 7 Edw. 4: 12: and 21 H: 8 *Brooke*.

V. *Where a man may enfeoff his wife, and where a feoffment of a ſtranger to a feme Covert, is good, and of the feoffment of the Husband alone, the wife being upon the Land.*

A Feoffment to the wife at the Church dore, of land within the view, is good, notwithſtanding the marriage, before entry, 38 E: 3: *Feoffments* 47.

See 4 H: 7: 4: That hee cannot by any means enfeoff his wife after the Marriage, and a feoffment to the wife *Poſt fidem datam, & carnalem copulam habitam*, is void, although it be before the marriage, *M.* 16 E: 3: *feoffments* 117.

Perkins 40 *contr.* That at this day, ſuch a feoffment is good, but at this day after marriage ſolemnized, a man cannot enfeoff his wife.

Fiſher ſaith, That a man may make a Leaſe to a ſtranger for a Moneth, the remainder to his wife, 4 H: 7: 4.

Where the husband and wife acknowledge the right of the husband by fine, the Rendor ſhall be received to them, and to the heirs of the wife, becauſe the husband cannot give his right to his wife, 8 Ed. 3: 3: *Fines* 87.

Note, Husband and wife Joynt Tenants, the husband may well make a feoffment of the Land, although the wife then, and at all times after be upon the land, and will not agree to it, 21 *Ed.* 3: *Feoffments* 65: *Aſſiſe* 464.

VI *Where*

VI. *Where by the* Habendum, *or Reſervation, the Eſtate precedent ſhalbe changed, altered, or enlarged.*

LAnd is given to a man and the heirs of his body, *habendum* to him and his heirs, *M* 21 H 6 *Feoffments* 35: *Finchden* agrees, where land is given to husband and wife in taile, to have to them and their heirs, or to the heirs of the Husband, for every Eſtate may be ſaved; otherwiſe it is, where the firſt gift was in frank-marriage *&c.* becauſe when no reverſion is in the Donor, it is no frank-marriage; but is a fee preſently, 45 E 3 20 *Taile* 14. And *Perſey* ſaith there, That a gift in fee to have in taile is a fee ſimple, but 21 H 6 and *Perkins* 35 contrary, and hee ſhall have taile, and fee expectant.

Upon a gift to the husband and wife in frank-marriage, to have to the husband and his heirs, the wife hath but an eſtate for life, 19 H 6 22: 45 E 3.20. But ſee P 2 E 2 *Feoffments* 94 13 E 4 *Formedon* 63, 32 E 1 *Taile* 25 that in ſuch caſe, the *Habendum* ſhall be void, becauſe contrary to the premiſſes, and doth deveſt an eſtate given, and ſo it ſhall be frank-marriage and not fee, ſee 16 E 3 *verdict* 21.

Paſch 25 *Eliz* in *Com. Bench* in *Webb* & *Potters* caſe The deed was *dedi & conceſſi, I W* and in *Liberum mortagium Iohannæ filiæ ſuæ habendum eidem I.W: & heredibus ſuis in perpetuum tenendum de Capital: B. A* It was objected, and 9 E:3: 13 E·1: *vide* 25: 3 H:4 by *Hil*, vouched that it was a good frank-marriage, and a difference taken where a remainder upon a frank-marriage is limited to a ſtranger, and where to one of the Donees: But after judgment, it was reſolved by the Lord *Dyer* and all the Juſtices, that it was not frank marriage nor taile, but a fee-ſimple in the husband, and the old books denyed for Law, for here was an expreſſe limitation of a fee to the Husband, which ſhall not be contradicted by a intendment, and the husband had the whole Eſtate and the wife nothing, and the words of grant, were not the words of frank marriage, for then it ſhould have been *In liberum mortagium cum Iohannâ filiâ meâ* in the ablative caſe

And a Gift in frank marriage *Habendum* to them, and to the heirs of their two bodies is good frank-marriage, *vi. guard* 116:

Vi: 31 E:1: *Tail* 116. If a gift take once effect as a Frankmarriage, and afterwards the Donor grants the Reverſion over, or the remainder doth diſcend to the Donees, the eſtate ſhall not be deſtroyed, but ſhall remain as an eſtate taile, becauſe it once took effect in the donees and their Iſſue as frank-marriage.

Land given to *R and S*: *Habendum* to *R*: for life, the Remainder to *S*: or that after the death of *R*: *S*: ſhall have to him and his heirs, now *R*: takes ſolely for life as *S* doth ſuppoſe in a Formedon, 8 E:3: *Feoffments*

73: but a gift to two, to have to one alone is a void *Habendum*, 19 *Edw*: 3: *Taile* 1.

A gift in Frank-marriage, or in Frankalmoigne, rendring Rent, how it ſhall enure, or ſhall be void, ſee 10 *Aſſ.* 26. 13 *H.* 4. *Meſne* 74. A rent may be upon Frank-marriage, but ſee 4 *H.* 6. 22. by *Martin*, ſuch a reſervation is void, 26 *Aſſ. pl.* 66. *acc.*

A gift in frank-marriage, tail, or fee, to have for life, is void, but a generall gift, to have for years ſhall be good 19 *E.* 3. *Taile* 1. *Onſlow*, this is where it paſſeth by Livery, for by ſuch generall grant of an Office, he hath but at Will, yet by ſuch generall grant of a Rent charge, he hath a free hold as it ſeems, if there be not ſuch an *Habendum* as makes it certain, 7 *Ed.* 3. *Aſſ* 132. And *Quære* if there be a differente, where a man who hath an Office, granteth it; and where the Lord makes an Officer without limiting any Eſtate, *&c.*

The King grants a Mannor, to have *Simul cum* another Mannor, or with an Advowſon in groſſe, the Advowſon nor the other Mannor ſhall not paſs: Otherwiſe it is, If I grant *Manerium de D. cum manerio de S. quære*, for *Paſton* held it all one, 9 *H.* 6. 27.

A Man leaſeth a Mannor for life, ſaving the Advowſon appendant, and afterwards granteth the Mannor, *Habendum cum advocatione Eccleſiæ*, it ſeems the advowſon ſhall not paſs, 38 H. 6. 40. 43. and 44. But a grant of a Mannor with a Hundred, or other Mannor in the premiſſes of the Deed, is good, 8 H. 7. 4. *grants* 42.

VII. *By what Name a man ſhall take a Feoffment, and where he is miſenamed in his proper name, and where without Name.*

A Man pleaded a feoffment of the Mannor of *D.* and the Deed was of the Mannor of *S.* and void, as a feoffment to *I. S.* where the Deed is *T. S.* but good, where ſuch a Deed is *I. D.* and he ſhall plead it according to his name, if he be known by the one or the other, or he may plead that he did enfeoff him by the name, 1 H. 7. 29. *Feoffments* 30. and that a man ſhall not have two names of Baptiſme, ſee 9 E. 3. *Feoffments*, 74. 29 *Aſſ.* 16 *Feoffments* 28. and there it ſhall not be averred *per nomen*, if it be of Sir-name, 9 *Edw.* 4. *grants* 23. and there ſee a recovery by another name, where it ſhall be averred *per nomen.*

A gift to an Abbot and Covent is good without more, ſo a gift to the Church of *D.* the parſon hath fee, 11 H. 4. *Feoffments* 42. 9 H. 5. *acc.*

Land given to a man and his firſt ſon begotten, this is void to the Son not born before, but if he be born, he ſhall take joyntly, ſo a gift to a man and his firſt wife, 18 E. 3. *Feoffments* 60.

And

And a gift to the Son or wife of *J.S.* is good without any other name, if there be ſuch at the time, *M.* 30.*E.*3.*Feoffments* 64. as a gift to the Heirs of *I.S.* who is dead at the time, 11 *E.* 4.*Age* 25.

Mary pleaded a Releaſe to her by the name of *Mariot*, *Mowbray* conceived that ſhe might plead that Deed, if ſhe were known by the one name or the other, *Finchden*, contrary, but if it were confirmed by the name of *Mariot*, the ſame muſt be ſhewed. See the gift was to *I.* and *Mariot* his wife, ſo as there needed no name of Baptiſme. *Quare* 46 *E.*3.22.

Land given to *W.* the Remainder to the Monks of the new foundation of the King, and becauſe they had not a Prior at the time, the right is in the King, till the Prior be made, and then the Leſſee ſhall have aid of the Prior, 32 *E.* 3. *Aid* 37. and in ancient time a grant to ſuch a Com-Monk did ſettle in the houſe, but a grant to two of the beſt men of ſuch a company in *London*, who have not a Corporation, is void, and they of *London* cannot preſcribe to make Corporations, 49 *E.*3. *Deviſe* 7.

A remainder in Tail to the heirs of *T.* and *S.* is a Joint-tenancy in them, if they be now heirs, and if to *A.* and to his heirs, and to *J.* this is a ſeverall Right, *M.*38 *E.*3.*Formedon* 18.

And if two Parceners alien, reſerving Rent, they are coparceners, and not Joint-tenants of the rent, 38 *E.*3.32. but where the remainder is entailed to the Heirs of *J.S.* and *T.N.* if one hath iſſue a Son and dieth, and the other dieth, his Son ſhall not have any thing by *Finchden*, which *Thorp* denied, 30 *Aſſ.*47.

And if a Remainder be intailed to the next of the blood *puerorum* of *W.* and *W.* hath two Sons and a daughter, and the daughter hath iſſue at the time of the gift, and the Sons not, the iſſue of the daughter alone ſhall have the Land, although that the Sons have alſo iſſue before the remainder fall; but a remainder limited *heredibus puerorum*, ſhall be to all the iſſues born when it falls. *Quare* if one hath iſſue and dieth before the the others have any iſſue, ſo as he is heir of *W.* and it ſeems to be all one, 30 *Aſſ.* 47. *Deviſe* 14.

The remainder in tail to *T.* ſon of *J.* begotten of the body of *J. Candy*, good, without naming the wife; But in a Formedon ſhe ought to put her name, 30 *E.*3.18. *Feoffments* 64.

VIII. *Where a Feoffment by a Letter of Atturney ſhall be good, and where he doth not perform his authority, and of a Leaſe or Feoffment by Bailiff, Steward, Deputy &c.*

IF a man make a Letter of Atturney to enfeoff *T.* upon Condition and he deliver him Seiſin without condition, the other may well plead, that,

that he did not enfeoff him in manner and form, *M.* 11. *H.* 4, 3. *Feoffments* 41. See there, a Feoffment well made by Letter of Atturney for to deliver Seisin, without any deed of Feoffment.

Also the Livery upon condition is void, when the Letter of Atturney was to make it simple without condition, 12 *Ass.* 2. But if the Letter of Atturney be simple, and by word the Feoffor command him to deliver Seisin upon Condition. *Quare*, if the same be Countermand, and it seems not, because he cannot have an authority without deed *&c.* 26 *Ass* 39. 35 *Ass.* 6. 38 *Ass.* 3. of the countermand, *vide* 34 *H.* 6. *Administr.* 3.

A man makes a Feoffment in Fee, and a Letter of Atturney, to deliver Seisin, and before that done he becomes deaf and dumb, but his intent may be well gathered by signes, that he willeth that the Feoffment be made, for which, Livery was made afterwards, and it was adjudged good, 25 *Ass.* 4. *Feoffments* 84.

A. made a Feoffment to *T.* with a Letter of Atturney to a stranger to make Livery of Seisin after the death of *A.* now Livery made in the life of *A.* is a Disseisin of him, although he agree to it afterwards, 46 *Ass.* 38. *Feoffments* 89. *Wich* conceived that here *T.* was Tenant at Will, *&c.* as if he had entred by the Commandement of *A.* 18 *H.* 6. 16. and Livery after the death of *A.* shall be void, 1 *H.* 7, 8.

He who makes Livery by a command is a disseisor to him who hath Right Paramount, as if a Bailiff make Execution by a Warrant, he is a Disseisor to a stranger who hath Right, 10 *E.* 3. *Assise* 162. but if *A.* disseise *B* to my use, and I command *C.* to take Seisin for me, Assise will lie against me, without naming him, 35 *Ass.* 2.

It was said, that a Bailiff, Steward, nor the Commander of a Priory, could not make a Lease of the Freehold, but well they might by Copy of Court-roll, *M.* 19 *E.* 3. *Feoffments* 68.

A Feoffment and a Letter of Atturney to make Livery to *J.* afterwards the Feoffor doth race the name of *J.* and writes *A.* and sayes nothing, the Atturney makes Livery to *A.* and afterwards the Feoffor doth agree to it, this is good *&c.* 35 *Ass.* 6. 26 *Ass.* 39.

Livery made by Atturney after the death of the Feoffor is void, 1 *H.* 7. 8. but a Deed delivered after the death of the Grantor shall be good. *M.* 8. *H.* 6. 28.

IX. *What shall be said a good Livery and Seisin, and when it needeth not, and when Livery is good within the view, and when out.*

A Feoffment to a woman at the Church doore, of Land within the View is good, 38 *E.* 3. And

If the Son do give back the Land to the Father in the Church, out of the

view, the Father being in poſſeſſion, it is good, 41 *E.* 3: *Feoffments* 53. 39 *Aſſ. Feoffments* 88.

If a man do deliver a Charter of Feoffment to me, being ſeiſed of the ſame Land, and prayeth me to deliver him Seiſin of the Land, and I do deliver him back the Charter, without ſaying any thing, nothing paſſeth, but if I deliver it back expreſſely, in the name of Seiſin of the Land, it ſhall paſſe, and ſo was it adjudged, *P.* 43. *E.* 3. *Feoffments* 51. 38 *Aſſ.* 2. 39 *Aſſ.* 12. *C.* 9. *part* 137. 27 *Aſs* 61. 41 *E.* 3, 17. 6. 35 *H.* 6. *Br. Feoffments* 174. If a man deliver a Charter of feoffment upon the Land, *Quære*, if it do amount to a good Livery; But if he ſay, hold and enjoy this Land, according to the Deed, it is a good Livery, if he after deliver the Deed upon the Land he ſay, enter and enjoy, it is a good Livery. 36 *Eliz Callard* and *Callards* Caſe was this, *Standforth. Eaſteron*, reſerving an eſtate to my ſelf and my wife, I do give thee my Lands, it being upon the Lands adjudged it did amount to a Livery.

If the Diſſeiſor wave the poſſeſſion, and the Diſſeiſee claimeth the ſame by ſufficient words, or other matter, and the Diſſeiſor being upon the Land deliver a Deed of Feoffment of that to the Diſſeiſee, and he deliver it him back again in name of Seiſin, this is a good Feoffment, by *Finchden*, 41 *E.* 3. 18. But if the Feoffor be not upon the Land, it ſeems the other hath but an eſtate at will by ſuch delivery back of the Deed, 18 *H.* 6. 16.

A man lying ſick, doth deliver to *B.* a Deed of Feoffment of the ſame houſe, and ſaith, *Habeas & teneas*, according to the form *&c.* this is a good Feoffment, although he doth not go out of the houſe, but dieth there, 27 *Aſſ.* 61 *Feoffments* 85. this is if the Feoffor do not claim the Freehold afterwards, *P.* 11 *E.* 3. *Aſſiſe* 86. 11 *Aſs.* 43. *See Callards Caſe before.*

X. *Where Feoffment by* Dureſſe *is void, and of* non ſanæ memoriæ.

A A Feoffment made by *Dureſs*, is void, and an entry by ſuch Feoffment is a Diſſeiſee to the Feoffor, 41 *E* 3. 9. 9 H. 7. 25. *contra*, and if ſuch a Feoffor at large, after do releaſe, yet he ſhall have Aſſiſe, 15 *E.* 3. *Dureſs* 14.

A man of *non ſanæ memoriæ*, maketh a Feoffment, and takes back an eſtate for life, he is for ſo much remitted, 25 *Aſſ.* 4. *Feoffments* 44. *vide F. N. B.* 203. and 35 *Aſs.* 10.

XI. *When*

XI. *Where a Feoffment by a Termer, or Tenant at Will, and the like, ſhall be ſaid a Feoffment, and of what value, and where a man ſhall have a Freehold and Term together.*

IF he who holdeth of me in Villeinage maketh a Feoffment to a ſtranger, this is a Diſſeiſin to me, although it be good betwixt the parties, and it ſeems that he might make a Feoffment is no Plea againſt me, upon ſhewing the ſpeciall matter, H. 14 *E.* 3. *Feoffments* 67.

Vide 23 H. 8. 7. and 25 H. 8. If one leaſeth Land to *J. S.* for years where he hath nothing in the Land, rendring Rent, the Leſſee entreth and payeth his Rent; the Leſſor is a Diſſeiſor. *Quære* if the Leſſee be not the ſole Diſſeiſor by his Entry.

21 *E.* 3. *Receits* 131. If the Guardian aſſigne Dower where the wife is not dowable they are both Diſſeiſors, as to the Infant. *Vide* 8 *E.* 3, *Aſſiſe* 149. 16 *E* 3. 8 *Aſſiſe* 28. The Guardian of an Infant made a Feoffment, the heir brought Aſſiſe without other Entrie.

If one enter and occupieth to my uſe, his Feoffment is a diſſeiſin to me, 8 *E.* 3 *Aſſiſe* 149.

Two Coparceners alien by Deed, the one being an Infant, and in the Guard of the other, and alſo ſealeth the Deed, yet this is holden a Diſſeiſin to him by the other, 8 *E.* 2. *Aſſ.* 394.

A Formedon upon a gift of Tenant for years, or for life, it ſhall be a good iſſue, that he was not ſeiſed of ſuch eſtate whereof he might make a gift for him in the Reverſion, but it was againſt every ſtranger, 18 *E.* 3. *Iſſue* 36.

Leſſee for years makes a leaſe for life, Remainder for life or in Fee, if he in the Remainder enter, he is a Diſſeiſor, 50 *E.* 3. 22. 43 *E.* 3. *Diſſeiſin* 5,

10 *E* 4. 19. *ac.* 22 *R.* 2. *Diſſeiſin* 8. *If the King alieneth my Land to one who entreth, he is a Diſſeiſor, and by the Statute of* 1 H. 4. *cap* 8. *I ſhall have able damages,* 20 *R.* 2. *Aſſiſe* 467. *ac.*

Leſſee for years or at Will, by his Feoffment was a Diſſeiſor at the Common Law, 10 *E.* 3. and the Freehold is in them, 12 *E.* 4. 12.

The King, after that the Ward was of full age, and before Livery made a Feoffment to a ſtranger, the heir ſued his Livery and avoided it, without having a *Scire facias &c. T.* 7 H. 4. *Liverie* 23.

If *Ceſtui que uſe*, occupie the Land at my Will, and makes a Leaſe in his name, this is a Diſſeiſin. *Quære*, if I give power to my Leſſee at Will to make a Leaſe, if the ſame be a Diſſeiſin *&c. M.* 12 *E.* 4. 12.

If a Termor holdeth over his Term, and maketh a Feoffment, and if there be twenty Feoffees over, yet the Aſſiſe ſhall lie againſt the laſt Feoffee, 44 *E.* 3. *Attainder* 22. the *Lord Furnifalls Caſe.*

If Leſſee for years leaſeth for life, and the Leſſee dieth, the Leſſor or ſucceſſor ſhall have *Terminum qui præteriit*, and the Reverſion is in them, 7 *E.* 3. *Iſſue* 7.

A man makes a Leaſe for life, and if the Leſſee dies within twenty years,

yeares, that his Executors ſhall hold over the Terme, this is good, 19 *E*: 3. *Covenant* 24.

XIII. *Where a Feoffment ſhall be intended a Fee, where a Freehold only, and where made void for incertainty.*

IN a *Cui in vita* ſuppoſing a Feoffment to the Husband, and the Wife Plaintiff, it ſhall be intended a Feeſimple, although it be not expreſſed, if the other doth not ſurmiſe the contrary, P. 8 *E*: 3. 24 *Brief* 448.

Leſſee for life voucheth his Leſſor, who doth him revouch, ſuppoſing that he did enfeoff him, and took back an Eſtate for life, and good, without ſaying that he did enfeoff him to him and his Heires, for that is intended, 17 E: 3. *Voucher* 152.

An Obligation is good which doth not expreſſe to whom he is bounden, if he acknowledge in the Deed that he oweth to *T.* &c. 2 E. 4 22. So if it be paying to the Obligor, it is good, 4 E: 4 31.

A Releaſe which is, *Noverint*, &c. *me I. S. relaxaſſe*, &c. *omnimod: actiones, quas idem B. habet I. S.* is void for the non-certainty, otherwiſe is it of an Obligation, becauſe that is ſeverall, 14 E 4 2.

A Gift to *T.* and *C.* & *haeredibus*, without ſaying *(ſuis)* is but a Freehold, although they have Warrant to them and their Heires, 19 H: 6. 73. 20 H 6. 35. 22 H. 6. 5. otherwiſe it is of ſuch a Deviſe, 20 H. 6. 38.

A Gift to *T. Remainder haeredibus*, not *(ſuis)* is but a Freehold, 20 H. 6. 39. A Remainder limited to the Heires of *T.* is a good fee, without ſaying, And to their Heires, 20 H 6. 39. 9 H. 6 *ac.*

XIV. *Where a Feoffment by the Queen alone ſhall be good, and how, and where her Leaſe, or Action brought by her alone ſhal be good.*

ONe by reaſon of a Feoffment of the Anceſtor of the Queen, prayed in aide of the King, and vouched the Queen, and good; alſo might have aide firſt of the King, and afterwards of the Queen, if ſhe were in Reverſion, by *Brian*, who ſaid, that the Queen ſhall do all things perſonals, as make Leaſes, Feoffments, and ſhall be bound during her life, 3 H. 7. 14. Aide of the King 32. And ſee a Leaſe of the Queen for life, H. 46. E. 3. *Petition* 20. And an Annuity granted by the Queen, *M.* 9 H. 6. Annuity 4. and 5.

And if the Queen leaſeth for life, rendring Rent, the Leſſee ſhall have aide of the King, 9 E. 3. 42.

Vi. 10 E. 3. 27. *b.* 19 E. 3. *Quare Imp.* 146. The Wife of the King is as a Feme-ſole, exempt from the King, and is of ability to grant or to pre-

ſent to an Advowſon. But in ſome caſes ſhe ſhall participate of the Prerogative of the King, and therefore *vi* 18 E. 3. 32 24 E. 3. 35. *Plenity* by preſentation is no bar againſt her.

If the King confirmeth the Gift in tail of the Queen, the Donee ſhall have aide of him without words of Warranty, for the Gift of the Queen is as his Gift: And it was ſaid, that the Queen Purchaſer ſhould hold as the Feoffor held, and of the ſame perſon, *M.* 9 E. 3. *Aide of the King*, 80.

Annuity brought againſt the Queen, who granted an Annuity to be had *de quadam ſumma aſſignata* for her Dower, out of the great Cuſtome of *L.* So where it was to be taken out of an Abby, 9 H. 6. 13. and 53.

XV. *Feoffment upon Condition, and where the Fee ſhall paſs by Livery, and where by the Condition performed afterwards, and where it is upon Condition without ſpeaking of it at the Livery made, and of Feoffment,* Cauſa matrimonii prolocuti.

A Deed was of Land to *T.* for twenty years, and that after the twenty years *T.* and his Heires ſhould hold for ever by twenty pounds Rent; It was holden that if the Grantor within the Term dieth, the Wife ſhall have Dower, and his Heire ſhall be in ward, for the Freehold is in him untill it doth appear that the other agreeth to the Rent, *&c.* 31 *E.* 3. *Feoffments* 119.

The husband leaſeth the Land of his wife for years, and in ſurety of the Terme makes a Confirmation in fee upon the Livery, he expreſſeth the intent, that he ſhall have but for the Term, yet he hath fee becauſe the Condition is not expreſſed in the Deed, and it could not be found where a ſimple Confirmation was ſhewed. 17 *Aſſ.* 20. But if a Feoffment be, and Livery abſolute, but ſpeech that the meaning is upon Condition, it ſeems the ſame ſhall be well found; but if the ſpeech be before the Leaſe for years, or if the ſpeech be, that I you enfeoff in ſurety of the payment of twenty pounds, and after at another day a Feoffment is made, this is a ſimple Deed, although the Feoffor hath paid the money to the Feoffee, yet it ſeems he ſhall not enter, for it was enquired if ſuch ſpeech was at the time of the Livery, 34 *Aſſ.* 1. *Aſſ.* 311.

A Feoffment *Cauſa matrimonii prolocuti*, ſhall be averred ſuch, although that an abſolute Deed be thereof afterwards made; but if the Speech be of a Feoffment with a Remainder, and an abſolute Deed be made and Livery upon it, the ſame is no Remainder, 34 *Aſſ.* 1. 12 E. 1. *Feoffments* 114. *vi* 8 E. 2. *Entry* 78 *vi* 4. *Mar. Dyer* 146.

A woman made a Feoffment *Cauſa matrimonii* to *B.* who married her, after ſhe died, her Heire did recover, and in a *Mortdanceſtor* againſt the Husband, 13 E 1. *Feoffments* 113.

A wo-

A woman made a Feoffment to *T.* being married, *Cauſa matrimonii, &c.* by expreſſe Condition, and after the death of *T.* ſhe well entred for the Condition broken, 41 *Aſſ.* 13. *Condition* 17.

Cauſa matrimonii well maintained by the husband and wife againſt *T.* although it appeareth that the wife cannot now marry him, but becauſe the Charter was abſolute, and it appeared that ſhe had received forty pounds of him for the land, ſhe could not have the averment, *&c.* 8 E. 2. *Entry* 78. *Fitz. N. B.* 215. *ac. vi.* 41 *E.* 3. 6. and 19. 4. *Ma. Dyer*, where that is an expreſſe conſideration in a Deed, another ſhall not be averred, but if a Deed be abſolute, and no conſideration is expreſſed, a conſideration out of the Deed may be avetred, *C. Lit.* 204. *ac.*

VVhere a man giveth land to a woman, *Cauſa matrimonii*, and afterwards marrieth her, the Gift thereby is not defeated, *M.* 5 *E.* 2. *Cui in vita* 24. and if he will not marry her, he ſhall not have *Matrimonii prolocuti*, *F. N. B.* 205. *F.* But it ſeems that Writ doth not lye upon a Gift in tail, *ib. C.* 2 *part* 74. *ac.*

Leſſee for years, upon Condition that he ſhall have Fee if he be diſturbed, being diſturbed, he had an Aſſiſe without re-entry, 10 *E.* 3. *Aſſiſe* 101. *vi.* 6 & 2. *Quid juris clamat* 20. 12 *E.* 3. *Voucher* 265. *Lit.* 81 *ſect.* 350.

A Feoffment, upon Condition that if he hold the land peaceably fifteen years, the Eſtate ſhall be void, and within the term the Feoffor grants the Reverſion to a ſtranger by fine, the Tenant attorneth, this is good, *quere* 45 *Aſſ.* 10. See the Feoffment was in ſurety of the term of fifteen years: And the opinion was againſt the Grantee of the Reverſion, becauſe the Tenant after the attornment, & within the term, was put out.

XVI. *Where a Feoffment of Lands ſeiſed into the Kings hands ſhall be good.*

IF the Heire be in Ward of the King, intrudeth upon the poſſeſſion of the King, and levieth a Fine, it is void; but a fine levied by him without intruſion, is good to bind him and his Heires, 1 H. 7. 5. *Fines* 26. *vi.* 13 H. 4. 3. by *Hank*, that by a Feoffment after intruſion nothing paſſeth.

So of a Feoffment of Land, ſeiſed for primer Seiſin, or for Alienation without licenſe. And *Frowike* conceives that the Seiſure of the King, of Lands of a Prior Alien, or for a Fine for Alienation, ſhall avoid every Feoffment of them made without his licenſe; and upon generall licenſe to alien ſuch lands, he ſhall not alien untill the Kings hands be removed. But a Feoffment of a man outlawed in a perſonall Action is good, and the King ſhall not have the profits afterwards, otherwiſe it is of a term for years, 21 H. 7. 7. 13 *Aſſ.* 59 H. 6 20. *ac.*

If the Heire entreth after Office found of a Tenure for the King before Livery ſued, and dieth, his Wife ſhall not have Dower: Otherwiſe it is

of an Entry before Office, 4 *H*:7.1. *Dower* 18. And there *Fitz.* ſaith, That the Feoffment of the Husband in the laſt caſe is good, and ſhall not be defeated by the Office after found, but it is not ſo in the book at large.

Schard conceives, if it be found by Office, that he who hath but for life, died ſeiſed in fee, and held of the King, here he in the Reverſion might well make a Feoffment of the Land during the poſſeſſion of the King, becauſe the King hath not cauſe to ſeiſe upon the matter: Otherwiſe it is where Livery ought to be. But where an *Ouſter le main* ſhall be, a Feoffment ſhall be good after that in Chancery, before a Writ of diſcharge ſhall be to the Eſcheator, yet before that the King ſhall have the profits, becauſe the *Ouſter le main* is to no perſon certain, 10 E: 3. 3. *Aſſiſe* 256.

If Leſſee for life upon Condition commit Felony, and after Exigent before the King hath ſeiſed, the Leſſor entreth for the Condition broken, the ſame is good, otherwiſe if the King had ſeiſed: But ſome thought that for the Condition broken after the Exigent, that he could not enter, 27 *Aſſ.* 50. And that after Seiſure he ſhall not enter, 5 E: 4. 4. *vi.* 3 E. 4. 27.

Vi. 4. *E.* 4. 23. If it be found by Office that the Kings Tenant is ſeiſed of ſuch lands: if another hath rent out of the land, if he grant the ſame over, the Grantee ſhall not have the Rent, but by Petition to the King. So if a Condition be broken, the land being in the poſſeſſion of the King, there can be no entry for it upon the King: And ſee 4 *E*:4.23. what land is forfeited to the King, he ſhall hold it diſcharged.

XVII. *How the form of pleading of a Feoffment ſhall be, and of the pleading of a Feoffment made by* Ceſtui que uſe.

SEe 35 H:6.63. of a Feoffment, he ſhall ſay, In his Demeſne as of Fee, and of a Leaſe for life, as of Freehold.

He who pleads a Feoffment of *Ceſtui que uſe* in Bar, may well plead generally that he entred, and did him enfeoff, if it be void by the Statute, as that he was within age, impriſoned, *&c.* the other ought to alledge that, *T.* 6 H.7.6. *Verdict* 15.

FEOFF-

FEOFFMENTS, AND RESERVATIONS.

I. *Where a Reſervation of a Rent by Deed Poll upon a Feoffment ſhall be good, and where it is not good without Deed, and of Advowſon.*

NOte by *Needham* and *Littleton*, that a Rent ſhall be well reſerved upon a feoffment by Deed Poll, for by the exceptance of the Livery the feoffee hath agreed unto the Condition, *&c.* 8 E:4.8. *Feoffments* 14. *Danby* contrary.

Although the Deed of feoffment or confirmation by which the Rent is reſerved be indented, and the one ſeal one part, and the other the other, yet if the feoffor ſpeaketh all in the firſt perſon, it is his Deed onely, and the feoffee ſhall not be bounden, and the Reſervation void by *Danby*, and ſo was the opinion of the Court; but if it be, This Deed witneſſeth, *&c.* it ſhall bind both parties, 35 H.6.33. *Eſtoppell* 88.

A Woman who recovered Dower, granted all her Eſtate, and made Livery upon the land, rendring Rent without Deed, *P:* 45 E: 3. *Scire facias* 92.

Danby in a manner agreeth, that a Reſervation of Rent upon a feoffment by Deed Poll ſhall be good, with theſe words, *In cujus rei Teſtimonium prædict.* the feoffee hath put to his Seal: And upon a Gift in tail, it ſhall be alſo good without Deed, 8 E:4.8. *Feoffments* 24.

Ceſtui que uſe entreth and Leaſeth, rendring Rent, this is a void Reſervation, if he have not a Deed of it: As a Reſervation now upon a feoffment in fee, for the Reſervation is in the feoffees, 5 H: 7. 5. *Feoffments* 33.

It was holden *P:* 21 *Jac:* in the Exchequer Chamber by all the Juſtices in the Lord *Sheffrid* and *Ratliffs* caſe, That if *Ceſtui que uſe* makes a Leaſe for life or years, that he convey no Reverſion: And upon ſuch Leaſe:

Leaſe reſerving Rent, the Reſervation is void, unleſſe it be by Deed indented, *vi.* 21 H.7, 25 8 H.7, 8. 27 H:8. 13, *ac.*

A feoffment of a Mannor reſerving one acre, and Advowſon appendant, it is good without Deed, as it ſeems, for the Advowſon doth remain appendant to the acre, 5 E:3. 66. *Livery* 7.

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11. *Where a Reſervation may be of part of the thing granted, or of part of that which paſſeth by the Feoffment, and where reſervation ſhall be of the whole.*

BY a generall Leaſe of Woods, all paſſeth, but the Leſſor may well reſerve the great Wood by ſuch a Leaſe by word, 22 *E*:3 8. *Feoffments* 36.

A man giveth all his Tenements in *D.* except one Chamber where himſelf lyeth, the ſame is good, 11 *E*:3. *Aſſ.* 86.

Note, if a man hold of me by Fealty and Rent, and I do releaſe him all my right in the land, ſaving the Rent, I ſhall have the Fealty alſo, becauſe it is incident to a Rent-ſervice, and the Rent is ſaved ſuch as it was before, 11 *E*:4. 11. *Releaſe* 16. So if I grant the Rent in that caſe, ſaving the Seigniory. But if he holdeth by Homage alſo, then the Grantee ſhall have but a Rent-ſeck by the grant of the Rent, ſaving the Seigniory, 29 *Aſſ*: 20. *Grants* 76.

C 2. *part* in the Lord *Cromwells* Caſe, *ac.* 9 *E.* 3. 1. *ac.* A man may enter into a Warranty, ſaving to himſelf his Rent, or Wards, 2 *E*: 2. *Voucher* 108. and ſo was it adjudged in *Tuſſer* and *Bradburies* caſe, 23 *Eliz.* if the ſaving be by Indenture.

A man grants *totam partem piſcariæ ſuæ*, from *D.* to *C.* *ſalvo ſtagno molendini*; by this Reſervation the fiſhing in the Pool is not reſerved, becauſe he may have other profits of the Pool, and there are no expreſſe words of it, but if the Grant had been *Præter ſtagnum molendini mei.*

Skipton ſaith expreſly, that the Grantee ſhould not intermeddle there. Alſo he might have reſerved parcell of the Fiſhing by expreſſe words: As parcell of his land ſeverall upon a Grant of Common in all his Lands. But *Wich* ſaid, If upon ſuch Grant he had ſaid, *Salva Piſcaria mea*, it ſhould have been void, becauſe contrary to the Grant, 34 *Aſſ.* 11. *Aſſ.* 316.

A man granted unto a Prior by fine a Parſonage, ſaving to him and his Heirs, the Preſentation to the Vicaridge, from Vicar to Vicar for ever, it was a good fine and good Reſervation, *M.* 1 *H*:3. *Grants* 89.

A man gives a Mannor, ſaving to him and his heirs, one acre and the Advowſon appendant, the ſame is good, 31 *E*: 3. 66. *Livery* 7.

III. *Where*

III. *Where Reſervation of the profits of the thing granted ſhalbe good, what things may be reſerved, and where the Reſervation ſhalbe void.*

THe Lord confirms the Eſtate of his Tenant, ſaving ancient demeſne, with Rent and ſervice; nothing ſhall paſs of the Services, 33 *H.* 6. *Eſtoppell* 57.

If I enfeoff one of the Mannor of D. ſaving two acres, through which I uſed alwayes to carry and bring my goods from the demeſn Lands. *His*, in a manner agreed, That the Feoffor ſhould have that way, becauſe my ſelf had it as a profit of a Mannor &c. *T.* 20 *E.* 3. *Admeaſurement* 8.

Profits of a mill aſſigned for dower, 45 *Ed.* 3. *Dower* 50. alſo gifts in taile, and Formedons of them, 16 *E.* 3. *Formedon* 29.

A man giveth Lands to an Abbot, Prior, and Covent, *Ita quod Prior & Conventus habeant omnes exitus &c. abſque hoc, quod Abbas, &c. aliquid ſuſcipient ſolva prælacia ſua ratione conceſſionis prædict*, and good, but yet the Aſſiſe ſhall be againſt the Abbot alone, 14 *H.* 4. 10. *Non-ability* 21.

Common granted for a Way upon an agreement without Deed, 15 E 2. *preſcription* 51.

If a man makes a Leaſe upon condition that the leſſee ſhall not take the profits, this is a void condition, 6 *R* 2. *Quid juris &c.* 20. ſo it ſeems of ſuch reſervation 38 H. 6. 38. *acc*

A Rent well reſerved upon a gift in Frank-almoigne, and ſo of Frank-marriage, 13 H: 4: *Meſne* 74: See a gift in Frank-marriage with his daughter, *Habendum ſibi & hæredibus ſuis vel cuicunque aſſignare voluerit reddendo* 12 *d*: and a good Frank-marriage, and the land ſhall revert to the Donor after their deaths, without iſſue, notwithſtanding the Aſſignment of the husband after the death of the wife without iſſue, 13 E: 1: *Formedon* 63:

See 4 H: 6: 22: by *Martin*, Where a man gives land with his Daughter in frank-Marriage rendring Rent, the Reſervation is void, becauſe it is contrary to the tenure, which is to be quit and free, till the fourth degree be paſt, 26 *Aſſ*, 66: by *Richell acc*: and ſo in that adjudged, in *Webb and Potters caſe* 25 Eliz: *in B: R:*

A man gave land to the Prioreſs of *D.* by Deed, *Dedi &c: omnia. terras & tenementa abſq; homagio & fidelitate habend: & tenend: de me & hæred: meis, reddendo inde mihi annuatim* 10 *s. tantum pro homagio, & fidelitate, & pro omnibus quæ exigi poter. ſalvo tamen ſcntagio Domini Regis, quando currit*, and the party by this Deed claimed Frank-almoigne, but the Deed did not prove that, but it was holden by *Brown* and *Mutford* that againſt that Deed, the Feoffor nor his Aſſignes ſhould not avow for homage, yet eſcuage is reſerved, which drawes to it homage, *T*: 19 E: 2: *Avowry*, 224.

A man

A man granted an Advowson in fee, reserving ten marks of Rent, which he took before by the hands of the Parson, 29 E: 3: *Ass*: 361. so a man granted the parsonage saving the vicaridge, 2 H: 3: *grants* 89:

Quere this case, For 44 E: 3: 45 *C*: 5: *part* Edwards case, *C*. 5: *part*: 4: The Lord *Mountjoys* case, a rent cannot be reserved but out of things incorporeal, and not out of things incorporeall, as an Advowson is, But 14 E: 3. *Scire facias* 122. The King may issue a Rent out of a Faire which is incorporeall, and so out of a Rent.

IV. *Where Reservation ought to be only to him who makes the Estate, and where to one of them, and where it may be to a stranger.*

ASsise of Rent by a woman, It was found that her husband did lease the Land to the Defendant, reserving rent to him and the sayd woman his wife, for their lives, and that he was seised of the Rent, and dyed *&c. Berry*, Because it appeareth no gift of the Defendant to the wife, *&c.* but the husband reserved *&c.* and he could not give to his wife, the wife by award took nothing, 13 *E.* 2. *Feoffments* 108.

Vi. Littl 80. *Doctor and Student*, 94. It is a Maxime in Law, that a Rent properly as a Rent, cannot be reserved to a stranger, *Vi.* 21 *H.* 7 22. by *Frowick*, A distresse cannot be given to a stranger to a Lease, 49 *E* 3. 15. A man gave land in taile, reserving rent to him and his wife, it was void as to the wife.

N. acknowledged, *&c.* the right of *E.* wife of *R. Comes ceo*, *&c.* and for that *R.* and *E.* did render unto *N* for the life of *H.* and his heirs, and not received, without giving the husband also some estate in the reservation of the reversion, because he was party to the render, 16 *Edw.* 3. *Fines* 3. *&c.* upon such fine to the husband and wife who render for life, he could not reserve the reversion to them and to the heirs of the husband, where upon examination, it appeared that shee had a joynt estate with the husband in the fee before, because nothing is devested but the Freehold, nor the Reversion cannot be reserved to the heirs of both by fine. But *Trem* said, That the reversion might be to them and to the heirs of the wife, because the husband that he had fee before, 8 *Edw.* 3. 3. *Fines* 87.

W. levied a fine to *J*, as those, *Que I. and A.* his wife had *&c.* the rendring of the land to him in taile, *Tenend:* of the cheif Lord, and *Reddend:* to the husband during his life, twenty pounds with diverse remainders over, each to hold and render to the husband as before, and good, without reserving any thing to the wife, if she had not any estate before. But *Shard* said, That such Rent charge could not be good by way of reservation, namely to charge the issue in taile, for which cause the

the fine was levied without the reſervation, 9 *E.*3.6. *Fines* 89.

A. enfeoffed *C.* in fee, rendring to him and *B.* 40 *s. per annum*, with clauſe of diſtreſſe, and *A.* and *B.* brought an Aſſiſe of the ſame, which was challenged; becauſe that *B.* had not any thing in the land, *&c. Berry*, If we ſhould award the title ſufficient, you ſhould be attainted of diſeiſin, without taking the Aſſiſe. *Stone conceſſit*, and the Aſſiſe was taken by aſſent of the parties, 18 *E.*2. *Aſſiſe* 381.

Land is given to husband and wife in ſpeciall taile, the remainder to the right heirs of the husband, who dyeth without iſſue, the wife took to husband one *R.* and they by Indenture did leaſe the Land to *T.* who was right heir of the firſt husband for the life of *R.* rendring rent, and and re-entry for not payment *&c.* he payd the rent, and afterwards enfeoffed *N.* in fee, and for the rent behind in the time of *N.* they entred, and being put out, did recover in Aſſiſe, upon this matter found, and that for the rent behind, for there was no forfeiture, becauſe he who made the Feoffment had the reverſion, and their leaſe to him was no ſurrender, for he was concluded of that by the Indenture, which did affirm the reverſion in them. Alſo the Reverſion ſhall not be ſaid to the husband by the leaſe made for his life, for that is not expreſſed in the Deed, and the wife was remitted by the entry, 29 *Aſſiſe* 64. *Aſſiſe* 292.

Husband and wife, and three ſeiſed in fee leaſe the land to a ſtranger, reſerving to them and to the heirs of the three, and afterwards all of them brought waſt againſt the Tenant, as Joynt-tenants of the fee, and well, for the recovery is void in a manner, by *Schard and Wilby*, becauſe the Eigne right ſhall not be ſo deveſted, and the deed ſhall be no eſtoppell to husband and wife, to claim their reverſion; for a man may well avoid his deed made, although not his fine, by *Wilby*, 14 *Edw.*3. *Brief* 282.

See 38 *E.*3.8. That ſuch reſervation ſhall be good by intendment, that he had fee before, *Vi* 38 *H.*6.24. 2 *R* 3. *acc.*

Note, If the King leaſeth lands by his Letters Patents, rendring rent to a ſtranger, the ſame is good, and the ſtranger ſhall diſtrain for the ſame, and ſhall have debt after the leaſe determined, *&c. M.*35 *H.* 6.36 *Prerogative* 5.

V. *Reſervation by the word* (Salvo) *&c. where it ſhall be of the Ancient Rent, and where of new &c. reſerved by that Deed and by the words*, Reddendo, Faciendo, Reſervando, *&c.*

D*Anby* ſaith, That this word (*Salvo*) cannot make a new rent, but ſhall ſave that which was before, 35 *H.*6. 13. *Eſtoppel* 57.

A man grants a Piſcary, *&c. Salvo ſtagno molendini*, which was with-

in the precinct, *&c.* the ſoil and liberty to uſe for the amending of the mill &c. is ſaved, and not the fiſhing there; and ſo no parcell of the thing granted, if the thing do not paſs by the grant, for by that word, parcell of the thing granted is alwayes reſerved: But *Preter ſtagnum*, ſhall take away all priviledge of the grantee in it, 34 *Aſſ.* 11. *Aſſ.* 316.

Lord and Tenant by fealty and Rent, the Lord doth releaſe his right in the Land, ſaving the Rent, he ſhall have the fealty alſo, 12 *E.*4.12. 25 *E.*3.46.

If he which held by Knights ſervice make a feoffment in fee to hold by 2 *d.* that is to ſay, *Pro omnibus ſervitijs, ſalvo forinſeco ſervitio*, before the Statute, yet the feoffee ſhall hold by Knights ſervice, agreed, The Feoffee, *Pro homagio ſuo*, ſhall hold by homage during the life of the Feoffor only, but the heirs of the feoffee ſhall never do homage. *Schard* ſaid, That by exception a man cannot reſerve any other thing, which was not compriſed before in the grant, 8 *E.*3.67. *Avowry* 154.

Feoffment to hold by twopence *Pro omnibus &c. faciendum. Capitali domino ſervicia debita &c.* he ſhall hold as the feoffor, but ſhall not do corporall ſervice, and he ſhall take advantage of a Releaſe which is puiſne, 49 E.3.10. *Account* 44.

Fine of a Mannor except the third part, and that alſo granted by way of Remainder, 16 E.3: *Fine* 4.

A man gave lands *Tenend. libere & quiete, faciend. forinſecum ſervicium*, and becauſe it was not expreſſed *Faciend. forinſecum ſervicium capitali Domino*, It was adjudged that he ſhould hold of the Feoffor, 13 *H.*3: *Guard* 152.

And by this, *viz. Salvo forinſeco ſervicio*, nothing is ſaved but according to that which is charged over, and not according to that which his Lord paramount is charged with over, 26 *Aſſ.*66 *Grants* 75. ſee there the judgment contrary. *Choke* ſaith, If the Lord releaſeth all his right to his Tenant rendring 2 *d*: this is void, but if it be to hold by 2 *d*, or reſerving 2 *d*: this is good, becauſe it appeareth to be parcell of the Ancient ſervice, and he ſhall have fealty: Alſo he ſaith, That a Feoffment at this day to hold by 12 *d* is void, becauſe it doth ſuppoſe a Tenure, but rendring or reſerving 2 *d.* is good, and *Pigot* ſaith, That Confirmation of the Lord, to his Tenant *Reddendo* 2 *d.* is good, becauſe by recitall is a Tenure ſuppoſed, and this is parcell of the ſame Rent, 21 *E.*4. and 22 *E.*4 *Scire facias* 52.

If the Lord maketh a feoffment of parcell of his Mannor doing ſuit at his Mannor, this is ſuit-ſervice, for which hee may diſtrain, 9 *Aſſiſe* 24. *Avowry* 176

A man leaſeth land for life, *Dummodo ſolvat*, to the Leſſor for his life 10 *l.* he hath a free-hold in this Rent, 3 *E.*3. 15. *Aſſiſe* 172,

A man granted a Reverſion by Fine in taile to hold of him, doing to him for his life, 20 *l.* after the ſervices done, *&c.* 17 *Edw.*2. *Execution* 112.

If

If *A.* held of *S.* before the Statute by Fealty only, and he enfeoffeth *B*, ſaving to him 10 *s.* rent, this is void, becauſe it was not before, by *Wilby*, and *Green*, 26 *Aſſiſe* 66, *Grants* 75. And there *Thorpe* ſaith, that nothing ſhall be reſerved in a gift in frank-marriage by the word *Salvo*, becauſe this is but implication, which ſhall not take away the priviledge given before, but may well be by the words, *Reddendo*, or *Faciendo*, *&c.*

VI. *Reſervation of Rent upon a Fine, where it ſhall be good.*

UPon a Fine *Sur conuſans de droit come ceo, &c.* a Rent ſhall not be reſerved, ſo of a Fine upon Releaſe, becauſe theſe are executed, and the Conuſee in poſſeſſion, but upon a fine executory, as a fine upon Render, a Rent may well be reſerved, *H.*5 *R.*2. *Fine* 1. *vi.*39 *E.*3 1. and 46 *E.*3. *Fine* 43. againſt the Reſervation. T. 2 *E.*2 *Fines* 11. 7 *Edw.*3.17. *Fines* 83.

A reverſion well ſaved to him, who renders by Fine, 16 *E.*3. *Fine* 3. but not to him who acknowledgeth a Fine, *come ceo, &c.* 1 *Edw.*3.5. *and* 6.

A releaſeth to *B* by fine, and for that *B* grants to him a rent of 8 *s.* with clauſe of diſtreſſe, and it was received, 39 E:3.1. *Fine* 32.

The husband and wife grant and render a Mannor by fine for life, rendring the firſt year a penny, and the ſix next a roſe, and afterwards a hundred pounds *per an.* with re-entry, and this is refuſed, but might be received with clauſe of diſtreſs, 44 E.3 22. *Fines* 36.

Vi. 27 *H.*8 24. A fine levied upon a grant and render upon a Condition, *vi* 33 *H.*6. 52.

Husband and wife Tenant of the life of the wife of her land, he in the reverſion, grants and renders to the husband for life, *&c.* 44 *Edw.*3 *Fine* 37.

A rent reſerved upon a Fine of grant and render, releaſe levied by the husband and wife Tenant for the life of the wife, 28 E.3.95. *fines* 81 25 E.3.38. *fines* 7 8. *acc.*

Choke ſaith, If the Lord by fine reciting the ſervices certain; releaſeth to the Tenant his right, reſerving parcell of the ſervices, the ſame is good, and ſhall not be a new ſervice, *&c:* 22 E.4 *Scire facias* 52. *vi* 39 E 3.1. *Def: vi* 2 *H.*3.5.

VII. *Where a Reſervation ſhall be of a Leſſer Eſtate then he had before, and where the Eſtate ſhalbe changed by it, and where it is contrary to the Eſtate.*

Hankeford ſaith for Law, That a man cannot reſerve unto him a leſſer eſtate then he had before, as taile after the Statute of *Donis*, but upon ſuch reſervation, he hath fee as the taile was after iſſue had before the Statute, and there *Thorne* and *Hankeford* doubted of taile reſerved by fine, 14 H. 4. 13. *Monſtrans* 131, an Eſtate reſerved to the Feoffor, is Fee by *Berry*, 29 *Aſſiſe* 17.

H and *M.* his wife Conuſees, did render the Conuſors for life to hold of them and the heirs of *H.* begotten on the body of *M.* and that after his death, *Omnia prædict. terræ &c.* ſhould remain to *H. & hæredibus ſuis prædictis*, the remainder to the right heirs of H: and the right heirs brought a *Scire facias* &c. and the Writ was abated, becauſe the fee was executed in *H.* and the tail void. Alſo the Writ was *Remanere*, where it ſhould be *Revertere* 2 H 5 8 *Scire facias* 57 *vi* the book.

A man gave lands in taile, the remainder to himſelf for life, the remainder to a ſtranger in fee, and although the remainder to himſelf was void (yet *Herle* put a difference, where the remainder is over in fee, or not) yet the remainder to the eſtranger ſhould not be voided thereby, 7 E 3 19 *Formedon* 73.

A man cannot give to himſelf a leſſer eſtate by reſervation, for then he ſhould give him an eſtate which he had not &c, *&c:* 42 E. 3 5 and 11 *feoffments* 96:

N held of T in ſoccage, he of the King in cheif, *N* gave the land to hold by 2 *d Salvo forinſeco ſervitio*, adjudged that the Donee ſhould hold by Knights ſervice, the reaſon *Wilby* gives, becauſe he is but a forren Lord, *S* the King 26 *Aſſ*, 66 *Grants* 75:

But the Lord may well diſagree to the Feoffment of his Tenant to him and another, the Livery being to the other, and that for his ancient Intereſt in the Land, 10 E. 4 13 and ſuch feoffees, the Lord did diſclaim in the Chancery in a *Subpæna*, for the cauſe aforeſaid, 16 E 4 4 and 5: but goods given to me are in me, untill I do diſagree in a Court of record, 7 E 4 8 Sir *Robert Oxenſeilds and Knivets caſe*. 16 E. 4. 4. &5.

VIII. *Where more or leſſe paſſeth, and of the Letter of Attorney exceeded, and not purſued.*

IF a man maketh a Deed of two acres, and livery is made of foure acres *Secundum formam chartæ*, the four Acres ſhall paſs by the Charter by

Danby

Danby, Needham and Piggot, and that by the livery only: *Piggot*, If the Deed be of a Mannor, or of a houſe, and ſuch Livery of thirty acres, the Acres paſs by the Deed: *Choke*, this is where two acres are known by the name of foure, or the thirty acres by the name of the Mannor, *M* 7 E 4 *feoffments* 23.

If the Charter be of fee, and the livery upon it but for life, this is a fee ſimple, 13 E 3. *eſtoppell* 177.

A Charter is generall, *Habendum* for years, and livery is made upon it, yet nothing ſhall paſſe but for years, 19 E 3 *taile* 1.

IX. *Where a Feoffment or Gift ſhalbe good without ſpeaking of heirs or Succeſſors.*

A Grant to the Mayor and Commonalty during their lives, is not determinable, by *Brian* 22 E 4: *Feoffments* 29.

A gift to an Abbot and Covent, is fee without more, ſo of a gift, *eccleſia de D. T.* 11 *H.*4. *feoffments* 42. 10 *H.*4. *Feoffments* 100.

The Father enfeoffeth the ſon, and afterwards the Son declares in the Church, that he is contented that the Father ſhall have the land back again as fully as he gave it him, the inheritance ſhall paſs without more words, 39 *Aſſ.*12. *Feoffments* 88.

A grant to the Monks of *D:* without ſpeaking of Succeſſors, is a good fee, 32 E:3: *acc.*

X. *Where a Feoffment made by a Dean, or Mayor ſhall be void, where good.*

NOte, A Leaſe or a feoffment made by the Mayor ſolely: or by the Dean ſolely, is void; ſo if it be made by the whole body, if he hath not a deed of it, 22 Ed:4: *Feoffments* 29: 4 *H.*7:17: But *Townſend* ſaith, That a Corporation may have a Servant, and neceſſary Officer without deed, *Feoffments* 32.

Treſpaſs, the Defendant juſtifies as ſervant to the Mayor and Commonalty, and good, without ſhewing a Deed, the ſame not being of a thing which doth veſt or deveſt the Free-hold, 7 H:7: 16: *Monſtrans* 115:

XI. *Where a Feoffment of* Ceſtui que uſe *ſhal be good, and the manner of it, and where the Feoffee ſhall make a Feoffment or a gift, and binde the Land to Execution.*

IF *Ceſtui que uſe* in taile make a feoffment in fee, this is good, and ſhall bind him and the feoffee during his life, but after his deceaſe, the iſſue in taile may enter, *M:*4 H:7: 18.

If *Ceſtui que uſe* make a gift in taile, the reverſion is to the feoffees, ſo of a Leaſe for life, and they ſhall have waſt without attornment, and reſervation of rent is voi l without a Deed, becauſe the feoffees or ſtrangers and *Ceſtui que uſe* hath not the reverſion, but if *Ceſtui que uſe* make a Feoffment in fee upon condition & it is broken, he ſhall re-enter, and retain, and the Feoffees ſhall have nothing, 5 H 7:5.

Tenant by Statute Merchant, and by *Elegit* ſhall be aided by the Statute of *Richard* the third, of Uſes, for it is as a Leaſe, and the Statute hath relation to a ſtatute Merchant, where a Leaſe was made before the ſtatute made, and the entry of the Leſſee ſhall be maintained after, although he were ouſted before the Statute, 7 H. 7. 6 *vi.* 14 H 7. 14.

WARDS.

I. *Where the King ſhall have the Ward by reaſon of Lands, to which the heir hath right of Entry, and Title, and where the King may ouſt the Feoffee, and reſeiſe the Lands after Livery.*

HE who holdeth lands in taile of the King purchaſeth his licence to alien with Warranty, and to take back an eſtate in ſpeciall taile, the Remainder to his right heirs. Now after his death his heir being within age, and the ward of the King, he made a feoffment with Warranty and dyed, his heir within age and Ward of the King, the wife had taken the profits, and after the death of the husband his heir ſhall have

have a *Scire facias* againſt the wife, and ſhall charge her with the profits of the two parts after the death of her husband, notwithſtanding ſhe as widow of the King hath made Fine for her lands, and notwitſtanding the licence, for the King was deceived in that, and the third ſhe ſhall retain for her Dower, yet it was ſaid, that ſhe ſhould forfeit it, becauſe ſhe was party to the *Feoffment*, *&c.* 40 *Aſſ.* 36. *Gard* 1.

It was found by Office, that C. did alien by licence, and took back an eſtate to himſelf for life, the Remainder to his Son and his wife *&c.* they have liverie as purchaſors, and afterwards upon a Fine found in the Exchequer, that he was Tenant in Tail, the Reverſion to the King, it was holden that the King ſhall have the Ward, becauſe the Husband was yet within age; but at full age, that he might well deraign the warranty againſt the feoffees of the Father *&c.* 21 *E.* 3. *Livery* 32.

Vide C. 1 *part* in the Caſe of *Alton* woods. 41 *Aſſ.* 15. 40. *Aſſ.* 36. adjudge that the licence was void, and ſhall not enure to make the grant good during the life of Tenant in Tail.

Note, if it be found by Office, that if an Infant who is in Ward of the King, hath title to enter into land as heir, for a Condition broken, the King may well ſeiſe that land in the Right of the Infant, the Caſe was, that the King did licenſe his Tenant to enfeoff two men, upon Condition that they ſhould give back the land to him in Tail, the Remainder to a ſtranger in fee, he would not take it back, but by fine, and depending that, died, and the feofment upon Condition was found in the Office, and the Ward ſeiſed for other lands, and a *Scire facias* againſt the two, and it was ſaid, that the Tail was deſtroyed, becauſe the licenſe determined by the death, and the heir ſhall be reſtored in fee, 19 *E.* 3. *Entrie congeable* 39 *Gard* 114.

Note, if the Kings Tenant leaſeth for life by licence, and dieth, his heir within age in Ward for the Reverſion, and the leſſee alieneth in fee, the King may ſeiſe the land in the right of the Heir &c. 19 *E.* 3. *Gard* 113.

Vide C. 7. *part* in the Earl of *Bedfords* Caſe *acc.* the King in the Right of the Heir ſhall avoid mean eſtates after Office found, *C* 8. *part*, *Towerſons* Caſe *acc.*

The King and every Lord ſhall have the wardſhip of the Heir of his Tenant, upon whom there was a Diſſeiſin in his life, and an entrie in his Right, 48 *E.* 3. 8.

And the Donor ſhall have the Wardſhip of the heir of the diſcontinuee of Tenant in Tail, 48 *E.* 3. 8. 20 *H.* 6. 10. *Avowry* 21. But if my very Tenant alieneth and dieth before notice, yet I ſhall have the Wardſhip of his heir, becauſe it is of the heir of the Diſſeiſor. 2 *E.* 4. 6.

A man enfeoffeth two upon Condition, that after his death they ſhall enfeoff his heir, if he hath an Heir, and if not, that they ſhould make a Chappell, and it was found that he had a daughter within age, ſhe ſhall be-

be in Ward, but the Feoffees may well traverſe the Office, as that the feoffment was abſolute, and without condition, 42 *Aſſ.6 Traverſe* 24.

I. *Raviſhment of Ward brought by the King.*

A Raviſhment of Ward brought by the King was awarded good: So it ſeems he ſhall have what Action he pleaſeth, 47 *E.3. Guard* 30 becauſe tranſitory, but he ſhall not have an ejectment of Ward, becauſe that is locall, 1 *H.7.19.*

A Raviſhment of Ward by the King, the Defendant ſaid, that the anceſtor did enfeoff him, without that, that he died the Kings Tenant, and for Title to the body, ſaid that the Anceſtor held other land of him by Knights ſervice *&c.* and note, I may well retake my ward, who is ſeiſed by the Eſcheator without any Right, and without Office found for the King, 14 *H.4* 15. *Guards* 84.

II. *Where a man ſhall have the Ward by priority, and what is priority, and where Iſſuable, and where the Lord by poſteriority ſhall have the body.*

HE who purchaſeth the ſeigniory by priority, ſhall have the advantages *per Curiam, M.2 E.4. Guards 2. Temp. E.1. Guards* 134. *adjudge acc.* It is a good Plea in a Writ of Right of Ward of the body, to maintain priority, to ſay, that he held of *T.* whoſe Eſtate he hath by an elder feoffment &c. *Anno* 3. *E.3. Gards* 19. Or that he held of him, and thoſe whoſe Eſtate he hath before he held of the other, and thoſe whoſe Eſtates he hath, 13 *E.3. Guards* 39.

Iſſue ſhall not be upon the priority, but where the Tenancy is confeſſed according to the Declaration, and therefore if the Defendant doth confeſſe parcell holden of the Plaintiff in Knights ſervice, and parcell of himſelf in Socage, and ſaith, that ſo much is holden of him by Knights ſervice, by an ancienter feoffment, the Plaintif ſhall generally maintain his declaration(s) that all is holden of him *&c.* for if he ſhall anſwer to the priority, the Count ſhall abate *&c.* 6 *E.3.* 48. *Guard* 16. 18 *E.3.* 29 & 37.

In a Raviſhment of Ward it is a good plea, to ſay, that he holdeth of him by an elder feofment, without ſaying, of whoſe feofment, 11 *H.6.* 16. *Guards* 52. 10 *H.6.* 19.

Iſſue was taken upon priority by aſſent of the parties, 10 *H.3. Guard* 150 and 16 *H.3. Guard* 144. 17..3. *Gards* 146. A Writ ſent to inquire after Iſſue joyned.

He which holdeth one moiety of *T.* the other of *S.* doth enfeoff *W.* of

of the whole land, to hold of the chief Lords, now *S.* or *T.* he who firſt gets him ſhall have the Wardſhip of the body of the heir of the feoffee, *M.*8.*E.*3.57 *Gards* 26.

If a man holdeth two ſeverall Mannors of two ſeverall Lords, and at one day makes two ſeverall demiſes of them by Fine, and taketh back one Mannor to himſelf and his wife for life, the remainder to his Son, and the other to him for life, the remainder to the ſame Son, the wife dieth, the husband dieth, the ſon at one day entreth into both, and dieth, his heir within age, now he which firſt happeneth it, ſhall have the Wardſhip of the body; but it is ſaid, that if the wife had overlived, that Mannor of which ſhe had an eſtate ſhall be holden by poſterioritie, if the heir hath entred in the other Mannor living the wife, but then the other party ought to ſhew that &c. 33 *E.*3. *Gards* 162. although it was awarded, that that Lord ſhall have the Wardſhip of the body of whom the Tenant held moſt Land, without having regard to the priority, but there appeared no priority, ſo it was holden as an equall feoffment, 8 *H.*3. *Gards* 139.

The Queen doth purchaſe a Seigniorie by priority, and ſurrenders the ſame to the King, who grants it back to her for life, ſhe ſhall have the Wardſhip by priority, 24 E.3. *Gards* 27. 5 E.3. *Prerogative* 20 agrees of the grantee of the Queen over. And ſo *Green* thinks 24 E.3. although the King had granted the remainder over in Fee, and although that the Seigniorie was by reaſon of an honour, and not by reaſon of the Crown, See *Fitz.N.B.*142. contrary in the point.

Every priority is extinct by the purchaſe of the King, although he diſmiſſe himſelf afterwards of it, by the opinion of 24 E.3. 21. *Gards* 46. But *Hill* ſaith, that the grantee of the King of the Seigniorie, ſhall not have the ſame advantage of priority &c. which the Court granted, 14 H.4.9 *Gards* 86. 12.E.3. *Prerogative* 23.

But the Committee or the grantee of the ward ſhall have the Kings Prerogative, becauſe he remains Guardian, and the other hath not the Seigniorie, and therefore the Grantee of the King ſhall have it, becauſe of Ward, although that he holdeth of another Lord by priority, 12 H.4.18. and 25 *Gards* 81. See of that *Stamford cap.*2.

The Lord by poſteriority brings a Writ of Ward againſt the Mother, &c. and hanging the Writ the Lord by priority grants to her the Ward, ſhe may plead that in Bar, 21 E. 3. *Gards* 36. alſo it ſhall be a good Plea for the Heir, in a Writ of *Maritagio foris facto*, by the Lord by poſteriority, to ſay, that he hath agreed with the Lord by priority, and the Plaintiff ſhall not take iſſue that he held of the other by priority, but the ſame ſhall be, if he holdeth of the Plaintiff by priority, or by equall Feoffment, and that he firſt ſeiſed him, or that he doth not hold of the other, 44 *E.*3.15. *Bar* 201.

In a Writ of Ward, the Defendant ſaid, that the Anceſtor held of *M.* who holdeth of the Defendant, and that the Anceſtor held of *M.* by an ancienter Feoffment then of the Plaintiff, and that the anceſtor brought a

writ of Meſne againſt *M.* and did forejudge him, and attendred to us *immediatè*. *Schard*, The Lord ſhall have the ſame ſervice of the Tenant, as he ſhall have of the Meſne, be it greater or leſſer, which the Tenant did before to the Meſne: So all the change is in the Tenancy, and that ſhall change the priority. *Parn.* The Statute ſpeaks of priority of feoffment, and here the Tenant continueth his eſtate *&c.* *Schard*, you ſhall be helped by plea by the Statute, *Hill* 14. *E.* 3. *Guards* 37. and it was ſaid, that by ſuch forejudger, the Tenant ſhall hold of him by priority, of whom hee held by poſteriority, although that the Lord Paramount ſhall have the ſame Service now of the Tenant, by *Schard*, which he had before of the Meſne, *H.* 33 *E.* 3. *Gards* 12. alſo *Schard* agrees that the change is in the Tenancy, becauſe he is in the place of the Meſne, and becauſe the Lord which was by poſteriority ſhall have the priority, and not the Lord of the Meſne, becauſe he hath not the eſtate of the Meſne, and becauſe he cannot ſay, that the Tenant holdeth of him, and thoſe whoſe eſtate he hath by Eigne Feoffment *&c:*

But *Quære*, if the Meſne had held before of the Lord by priority, as the Tenant did of him, if that priority doth remain, 11 *E.* 3. *Gards* 115.

In a Writ of Ward, the Tenant doth diſclaim, and ſaith, that one *R:* hath another Writ depending againſt him, and he is ready to anſwer to whom the Court ſhall *&c.* and becauſe the Infant was married in his poſſeſſion, he loſt the value by award, and the Plaintiff did enterplead, and *R.* ſaid, that the anceſtor held of him by an ancienter *Feoffment &c.* 7 *E.* 2. *Guards* 121.

And the Defendant ſhall anſwer the value of the marriage being found, that he held of the Plaintif by priority, if married *&c.* 21 *E.* 3. *Judgment* 150.

Ingleby ſaid, that if the Tenant was diſſeiſed of the Land holden by priority, for which the Lord by poſteriority ſeiſed the Wardſhip of Body, and afterwards the Heir doth recover, or entreth &c. the Lord by priority ſhall have the Wardſhip of the body, *quia ceſſat cauſa.* *Fyſe* I deny you that *&c.* *H.* 33. *E.* 3. *Gards* 162.

III. *Ejectment of Ward, where it ſhall be of Land and of the body, where of the Land onely, and where it ſhall be brought againſt the Heir himſelf, where of Land and Rent.*

EJectment of Ward of the Land, and of the body was adjudged good, 2 *E:* 2 *Gard* 4.

Fitzh. N. B. 139 *b. acc.* But ſee 22 *Eliz. Dyer* 369. *C.* 10 *part* 130. *C.* 11 *part* 45. *B.* that Ejectment doth not lie of the body and Land, and therefore the Judgement was given, and damages for the Land onely.

And

And that is by the Common Law, and not made void by the Statute, which gives another Writ for the body, 3 *E*: 3. *Guards* 18. The opinion of *Mutford* ſeems contrary of the body, becauſe he cannot be ejected of it, 13 *E.*2. *Guard* 4. and 14 *E.*3. *Breif* 316. ſuch Writ was abated, becauſe it ſuppoſed alſo an Ejectment of the Heir, *&c.*

Raviſhment of the Ward of the land and body, and the Defendant pleaded Joynt-tenancy with him who died ſeiſed, 2 *t*: 4. 27. *Guards* 62. ſo admitted the Writ.

In Ejectment the Defendant ſaid, that he himſelf was Heir, ſo he ought to have a writ of Intruſion, for which the writ abated, 32 *E.*3. *breif* 347.

Ejectment lieth againſt me upon an Ejectment made by my Servant by my commandment, or without my commandment, if I take the profits: But if *A.* do eject me, and *B.* doth eject him, I ſhall not have Ejectment againſt *B.* 38. *Aſ.* 9. 38 *E* 3. 18. *Guards* 89.

Vi. 12 *H.* 4. 10. If two eject me to the uſe of one of them, I ſhall have Ejectment againſt them both, and if one dieth the Writ ſhall not abate.

Ejectment of Guard of land, the Defendant ſaid, that the Anceſtor did not hold the land of the Plaintiff, and the plea was not allowed, 5 *E*: 3. 21. *Guard* 28.

12 *H.* 4. 10. by *Hankford* Non-tenure is no plea in Ejectment of Ward, but he ſhall anſwer to the Treſpaſſe.

Ejectment of Ward brought, ſuppoſing that he held land and rent; It was ſaid, that the Meſne held the land not the rent, and that there could not be an Ejectment of a rent, and that a writ of Eſcheat, or *Ceſſavit* ſhal ever ſuppoſe a rent to be holden, *&c.* and yet the Defendant paſſed it over, and traverſed the Tenure, 13 *E.*3. *Guards* 38. But a writ of Ward, ſuppoſing that he held land, and rent was awarded good, 22 *E.* 3. 10. *Guards* 42. And the writ of Ward of a Rent alone, awarded good, where the Anceſtor had made a Leaſe for life, ſaving the reverſion and rent, 19 *E.*3. *Guards* 40. *vi.* 8. *E.* 4. 20. But he ſhall count that he held the land by the rent, *&c* 10 *H.* 6. 12.

Vi. Br. Ejectione Cuſtodiæ 9. Ejectment doth lye of a rent without poſſeſſion or Seiſin, for there is a poſſeſſion in Law, and the rent cannot be received till the rent day.

IV. *Where one ſhall be in Ward, living his Father.*

A Writ of Ward of the body of *I.* the heir of *Mawde*, the Defendant ſaith, that he is Tenant by the curteſie of the ſame land, and that the Infant is his Son and Heir apparant, and that he is ſeiſed of other lands which he holdeth of another by Priority, and the Plaintiff could not deny it, and therefore the Writ did abate, 2 *E.* 2. *Gard* 2. And to ſuch Tenant by the Curteſie one may be in Ward in the life time of his Father, 31 *E.* 3. *Gard* 154.

See 29 *H*:8. *Dyer* 8. and *F*:*N*:*B*:143. If a man be Tenant by the Curteſie of the Tenancy, the Heir ſhall not be in Ward during the life of the Tenant by the Curteſie.

But being his Heire apparent he ſhall not be in Ward, although the land of his Mother be deſcended after her death, ſo as the Father cannot be Tenant by the Curteſie: but the land ſhall be in Ward, 33 *H*: 6. 55. but ſee *F*:*N*:*B*:143. that the Heir apparant of the Tenant by the Curteſie ſhall not be in Ward, although he hath no land to deſcend to ſuch Son.

If land doth deſcend to the ſon which is holden of the father by Knights Service, *quære* if the father ſhall be Guardian, by reaſon of his Seigniory, or Guardian by Curteſie. *vi. Plow. Com. C. 6. part* 22. *Lit.* 25. The father ſhal ſhall have the wardſhip of his ſon and heir apparant, *jure naturæ*, and ſhall not forfeit the ſame by Outlawry, 31 E 3. *Guard* 154, *ac*, 18 E 3. 25.

See that the Mother who hath no land ſhall have the Cuſtody of her Son for Nurture.

V. *Where Guardian in Socage ſhall have a Writ of right of Ward, where Ravishment, and where Ejectment of Ward.*

RAviſhment of Ward is not given by the Statute *de hæredibus maſculis, &c.* to Guardian in Socage, but by *Weſt.* 2. *cap.* 24. *Quod nullus recedat a cancellaria ſine remedio, &c. T. E.* 1. *Gards* 133. *ac.* And the Writ which ſaies *legitimam ætatem*, doth not expreſſe what age is good, 3 *E.* 2. *Gards* 6. but ſee *F*:*N*:*B*:139. that this Writ is given by equity of the Statute of *de hæredibus maſculis*, and therewith agreeth old *N*:*B*. 95.

Raviſhment by Guardian in Socage, *Quære, vi & armis rapuit abduxit, & maritavit, ad damna, &c.* and found damages, and that he was unmarried, and recovered damages, 1 *E.* 3. *Gards* 29. *vi.* 7 *H*:4. 9. *contr.*

It is no plea for the Defendant that he hath nothing but in the right of his wife. Alſo Guardian in Socage may ſell the Wardſhip of the land, and of the body without Deed. *Quære* this, and he may deviſe it, and the Deviſee need not ſhew the Will, 26 *E*:3. 65. *Guards* 159.

Alſo that a Writ is depending in the Kings Bench, is no plea, yet he may have the body here. Alſo for Guardian in Socage the Writ is not *Capias ita quod habeas corpus hic, &c.* 9 *E*:4. 15. *Guards* 66.

Raviſhment of Ward, the uſage of the Town was pleaded, that when an Infant could meaſure an Ell of Cloath, he is of full age to be married, and that he is now of twelve years, *&c.* but becauſe he was Guardian in Socage, he ſhall anſwer to the Heir the value of his marriage, and the Defendant that he had not made Title, the ſame is no bar, 19 *E*:2. *Guards* 127.

Raviſhment by the Grantee of the Guardian in Socage, it is a good bar, that that Grant was upon Condition, and becauſe it was broken, the Grantor did reſeiſe, and granted unto him, and that the Defendant came in aide of him at the reſeiſure, 33 *E*. 3. *Guards* 163.

Guardian in Socage ſhall have a Writ of right of Ward, and ſhall count

to

to his damage, and the Lord ſhall not have him although upon proclamation made in his Court, the next of kindred do not challenge the Wardſhip, 27 *E.*3. 79. *Guards* 22. againſt 22 *R.*2. *Guards* 106. But againſt this *per Curiam* 13 *H.*3. *Guards* 141. of the Writ, ſee *F. N. B.* 139. *H.* his opinion that he ſhall not have a Writ of right of Ward, becauſe he ſhall account: But ſee the Regiſter, ſuch Writ is for him.

Ejectment of a Ward lieth for Guardian in Socage, without ſhewing of whom he holdeth, *vi.* 13 *H* 4. 17. *Guards* 82. and ſee there, it is no plea, that he did not dye Tenant in *T.* of whom the Writ ſuppoſeth that he held, for that is not the matter, but he ſhall anſwer, if he died ſeiſed And it is holden there, that Guardian in Socage ſhall preſent unto a Church which is void, *&c.* 29 *E.*3 *preſentment* 17. But the Law is now holden that he ſhall not have the preſentment, becauſe he cannot account for it, but the Heir himſelf, if he be not in the Wardſhip of any other, as in the Wardſhip of the King for other Lands, *&c. P.*8 *E.*2 *preſentment* 10 27 *E.* 3. *Prerogative* 19. *C. Lit.* 89. *a.* 31 *E.*3. *T. Eſtoppell ac. F. N. B.* 139. *H. ac.* 27 *E.*3. 5.

Guardian in Socage may forfeit the Guardianſhip, becauſe he may do a thing to the diſinheriſin of the VVard, 12 *E.*3. *Guards* 151.

Guardian in Socage, ſhall have a VVard, by reaſon of VVardſhip, as of him who holdeth of the Infaut who is in Ward, as his next of kind. *N. B.* 139. *H.*

VI. *Where the next of kin of the part of the Father, or of the Mother ſhall have the Wardſhip of the body, or he which can firſt get it.*

IF the Mother be Guardian in Socage, her Husband dead, and ſhe take another Husband, and to him deviſeth the VVardſhip, yet the next of kin may ſeiſe the body of the VVard, and may grant it over, as it ſeems by the book, 19 *E.*2. *Guards* 126.

But it is agreed that a Gift, or Sale, or Deviſe of the land and body by Guardian in Socage, is good, and he need not ſay that it was to the profit of the Heire, 26 *E.*3. *Guards* 159. And there the Deviſee of the Mother pleaded the ſame againſt the next of kin after her death, and the other did maintain his Seiſin, without that, that the Mother did give it.

In VVard to parcell, the Defendant claimes next of kin of the blood of the Father, becauſe the land did diſcend from the Mother, and to the reſt as Lord in Socage, where he had made proclamation in his Court for the next of kin, *&c.* and the Plaintiff being preſent made no claim, yet as to that part the Plaintiff did recover, and he ſhall account to the Heir for the time before: And he claimed the body, becauſe of the blood of the Father. But the opinion of the book ſeems to be, that whith of them could firſt get it, ſhould have it, 27 *E.*3. 79. *Guards* 22.

In Raviſhment by the Lord in Socage, where the Defendant claimeth by

by the Gift of the next of kin: It ſeems no plea for the Plaintiff that he was ſeiſed untill, &c. without that, that the next of kin gave, &c. but he ought to make himſelf a Title, as Guardian in Knights-ſervice, or otherwiſe, &c. 33 *E*:3 *Guards* 161.

Land holden in Socage is given in Frank-marriage, the Donee dieth, the next of kin, on the part of the Mother, to whom the land cannot deſcend, ſhall have the VVardſhip, 17 *E*:3. *Guards* 146.

A VVrit of VVard againſt the Lord in Socage by the Aunt, on the part of the Mother: The Defendant ſaith, that the Mother of the Infant is alive, and more neer &c. It is a good plea for the Plaintiff there that the Mother made a Deed in diſinheriſin of the Infant, and thereof was attainted, ſo as ſhe had forfeited her property in the VVard; and ſo was the opinion of the Court, 31 *E*.1. *Guards* 157.

VII. *Where Reſummons ſhall be againſt the Heire, or Executors of all the Defendants, or any of them in a Writ of VVard, and where againſt the Heire, or Executors of the Plaintiff, and what pleas they ſhall plead.*

IN a VVrit of VVard againſt *W. R.* and *S.* upon default at the Grand Diſtreſſe, proclamation iſſued: And the Sheriff did return *W.* dead, pendant the VVrit, and the VVrit ſerved againſt *R.* and *S.* who appeared not, the Plaintiff had a Reſummons againſt *S.* Heir of *W.* & Iudgment was ſtayed againſt *R.* and *S.* at the day, *G.* came by his Guardian: And the Plaintiff did declare againſt them all, and *G.* had not his age: And the Plaintiff recovered the VVard againſt them all upon the Proclamations; but the Court would adviſe whether the Infant ſhould render damages, 9 *E*:3.15. *Guards* 15. *F. N. B.* 143. And it was adjudged by *Wilby*, that Reſummons doth not lye againſt the Heire, if the Executors have Aſſets, &c. (*s*) to the value of the marriage, according to the Statute, and the Heire may well alledge that without diſclaiming the poſſeſſion of the VVard: But the VVrit againſt him needs not ſuppoſe that the Executors have no Aſſets: And the Plaintiff ſaid, that the Executors had not any thing at the day of the Reſummons: It was ſaid, that he ſhould ſay, they had not any thing the day of the death: *Quere* afterwards the Heir waved the plea, and ſaid, as to the body, that the Anceſtor had not any thing, and as to the Land, that the Anceſtor of the Infant doth not hold of the Plaintiff, which is an anſwer to both, and if the Defendant be found Tenant of the body, although it be found that the Anceſtor of the Infant did not hold of the Plaintiff, yet he ſhall recover; it ſeems to be no plea for the Heir that he himſelf is not Tenant, &c. And Reſummons doth not lye againſt him for the poſſeſſion, if the Executors have ſufficient, &c. *H*:18 *E*:3.4. *Guards* 110.

A Writ

A VVrit of Right by *L.* and upon her death her Heir ſued a Reſummons againſt the Defendant, and after her death againſt three Executors, who ſaid, that the Anceſtor held of *A.* who held of the King, and that he was ſeiſed of *R.* Son of *A.* and our Teſtator ſeiſed of the Heir, of which the VVrit is brought, *&c.* in the right of the King, and demanded Judgment of the VVrit: And it was holden that they ſhould not have that plea to the VVrit, becauſe the Teſtator had the ſame plea before to the Action, for which they were at iſſue, if fully adminiſtred: And *Sonte, ex abrupto* awarded, that the Plaintiff ſhould recover the VVard preſently, as he ſhall do at the Proclamation before the Inqueſt taken of the damages, *P.* 29 *E.* 3. 26. *Guards* 45.

Reſummons againſt two women Heirs of the Defendant in an Ejectment of VVard, who ſaith, that the Anceſtor of the Infant did enfeoff them, and found againſt them, and the Plaintiff did recover, 30 *E.* 3. *Judgment* 143.

It is conceived, that the Executors of the Plaintiff Guardian in Right cannot ſue a Reſummons of the Action commenced by the Teſtator, 11 *H.* 4. 53. 48 *E.* 3. 20. agreeth: VVhere the Teſtator brought a Raviſhment of VVard of the right of his wife: but the Statute is, that the Executors ſhall have a Reſummons where the Teſtator was Guardian in fact, and not the Lord, *Weſt.* 2. *cap.* 35. 9 *H.* 4. *Executors* 52.

If the Lord in Right doth not ſeiſe, it ſeems the Executors ſhall not have the VVard, whether he dye after the Action brought or before, *quere* 11 *H.* 4. 53. 6 *H.* 4. 2.

VIII. *Where the Husband and VVife ſhall have the VVard joyntly, or in the right of the wife.*

A Woman poſſeſſed of a VVard taketh a Husband and dieth, he ſhall have the ward, 30 *E.* 3. 6. *Guards* 35.

And a Raviſhment, or Ejectment of VVard will lye againſt the Huſband, without naming of the wife in ſuch caſe, 26 *E.* 3. 65. *Guards* 159.

But in a writ of Right of ward againſt the Husband, it is a good plea to the writ, that *T.* gave him to him, and his wife not named, *&c.* for ſhe ſhall have him after the death of the Husband, 2 *E.* 3. 15. *Guards* 17.

But upon ſuch Grant of the King upon Seiſure of the ward, which upon Office found ought to have remained with *T.* his Father, Tenant by the Curteſie, he ſhall have a *Scire facias* againſt the Husband, without naming his wife, 46 *E.* 3. *breif* 618. and the wife ſhall have the ward after the death of the Husband, if he doth not alien it, 14 *H.* 4. 25. and they may joyne or ſever in a Raviſhment, or Ejectment of Ward *ibid.* becauſe it is a Chattell reall, *quod nota.*

But in a writ of right of ward, they ought to joyn, becauſe Voucher lyeth: Alſo it doth not appear by that if they were poſſeſſed before: but

if

if the husband bring raviſhment of Ward, and recovereth, where it was the right of his wife and dyeth before execution, his executors ſhall ſue forth execution, but if he dye before judgment, the wife ſhall recover the Ward in a new action, 48 *E.* 3. 20.

IX. *The Count in a Writ of Ward, and the forme of it.*

A Writ of Ward of *P.* Son of *R.* he declared, that he was ſeiſed of the Services, by the hand of *R.* as by the hand *&c.* without ſaying in the time of year, *&c.* or that hee was ſeiſed of the homage and fealty as of *&c.* But in a *Ceſſavit*, Eſcheat *&c.* where the land in demean is demanded, he ought to count all in certainty, 3 *E* 3 *Guards* 19.

He who declares in a raviſhment of Ward, need not ſhew how hee cometh to the Ward, and every matter to the Writ affirmed by pleading to the action, and ſhall not be alledged for error afterwards; 29 *Aſſ.* 35 *Guards* 23.

Tenant in Dower ſhall have a Writ of Ward, and ſhall declare upon her caſe, but Tenant by the curteſie may well declare generally, that hee dyed in his homage, and awarded good, but *Schard* ſaid, Anſwer, and let it be a warning to thoſe that declare afterwards, 13 E. 3. *Gards* 39.

Raviſhment of Ward by Tenant in Dower, ſhe declared that he held of her by, *&c.* and that he dyed in her fealty, and good againſt a Raviſher without ſaying of whoſe aſſignment ſhee held. 22 E. 3. 19 *Gard* 44.

A Writ of Ward of eſcheat of a Rent is good, but then the Count muſt be of land *&c.* 11 H. 4. 81.

The Declaration was, that the Father held the Land, and the ſeiſin layed in the Grandfather, yet all was good, 22 E. 3. *Gards* 43. but where he claimes the infant as heir of his Father, it ſhall be a good plea, that the Grandfather was ſeiſed, and ſurvived the father, without that, that the Father had any thing *&c.* and it ſhall be a good plea to abate the writ, yet it was ſayd, that it was but an argument that the father did not dye in his homage, 20 H. 6. 30. *Gards* 56. and ſuch plea ſhall be good to the Writ without making title in a Raviſhment of Ward; but if he plead it in bar to the action, he ought to make title, 14 *H.* 4. 16. *Gards* 85. See 7 H. 4. 2. *Gards* 75. a ſpeciall taile ſurvived to the wife, yet the Defendant had not the Plea, without making title:

In a Raviſhment of Ward, as heir of the Father, where the elder brother ſurviveth, ſhall abate the writ, 9 H. 4. 3. *Gards* 74. and that was pretended to the writ without making title, 19 *E* 3 *Gards* 112.

Note, The reaſon of the book is, for that he ought to ſuppoſe himſelf heir to his brother, and not to the Father, *Per Curiam.*

The Writ was, *Cuſtodia terræ, & hæredis*, and the declaration of land and rent, and well, although the Writ did not make mention of the rent *quere* 22 E. 3. 10: *Gards* 42:

Raviſhment

Raviſhment of Ward, the Plaintiff declared, that *I.* mother of the Infant held ten acres, the Defendant ſayd, that *M.* Mother of *I* was ſeiſed took to husband *T*: had iſſue *J. M*: dyed, *T* Tenant by the Curteſie overlived *I.* by which it was holden, that the Infant ſhal be ſuppoſed the heir of *M* 18 *E* 3 25, and ſee there, That the plea, that *T* holdeth the whole is a good plea to the Writ; but by the concluding in bar, the advantage of it was paſt.

Raviſhment, ſuppoſing that *W*: held of him, and that he was ſeiſed, by her hand, whoſe eſtate, *T* Father of the infant had, it is a good Declaration, without alleadging, in fact, that *T* was his Tenant, or that he was ſeiſed by his hand, or he might have alleadged T. his tenant, and levied the ſeiſin by the hand of *W*: 14 *H.* 6: 17: *gards* 54: 22 *Edw*: 3: *gards* 43.

Ejectment by guardian in ſoccage, he doth not expreſs of whom he holdeth, nor doth expreſſe that hee is of full age, yet all good, 26 *H* 6 *gards* 56:

Raviſhment of ward, the Plaintiff counted, that he was yet within age, 37 H 6 7 *gards* 60:

Raviſhment of *C* ſon of T: and declared, that S held of T in Knights ſervice, and hee over of the Plaintiff and dyed, his heir within age, and good, for if he holdeth the land, it ſhall be ſuppoſed that hee holdeth the demean: The Defendant ſaid, that S. held of another, 8 *E* 4 20 *gards* 63 10 *H* 6 12:

A man ſhall not have a writ of ward by reaſon of ſeverall Tenures, although the Anceſtor held both of him, & therefore he was driven to put one Tenure out of his Declaration, 17 *H* 6 *gards* 117 but 46 *E* 3 *Breif* 619 it is holden, that a ward of land, (s) of two Mannors, holden by ſeverall tenures, and the Declaration according was good, otherwiſe where the body is demanded. And if I have two Mannors holden by ſeverall ſervices, and before the ſtatute I enfeoff a ſtranger of two acres, the one of one of the Mannors, and the other of the other, to hold both by Eſcuage, I ſhall have one Writ of ward of both lands, ſo of a gift in taile at this day, H 17 *E* 3 13 *gards* 10)

It is not materiall to which of the Donees the iſſue in ſpeciall taile be made heir in a raviſhment of ward, becauſe it is as Treſpaſs, and the Seigniory not traverſable, 41 *E* 3 15 *gards* 94 and H 45 E 3 *gards* 99 he ſhall not ſhew how coſin &c:

In a raviſhment of ward, the Plaintiff was driven to mend his Declaration, becauſe it was *Vi & armis, &c*: 7 H 4 9 *gards* 77 but contrary to this is 1 E 3 20 *gards* 29:

A writ of ward of land, and the heir, the Plaintiff declared of a Mannor and twenty acres, and thoſe being parcell of the Mannor, he did abridge as to them, becauſe the writ is generall of Land, and the heir, 39 E 3 10 *gards* 91.

A writ of ward, he declared, that he held the Mannor of *B* which now

is made into a Priory &c: and good without ſuppoſing that he held the Advowſon of the Priorie, the Defendant ſaid, that it had been a Priory time out of mind, ſo he ought to have ſuppoſed the Advowſon to be holden, for which &c. 42 *E*: 3. 7 *Guards* 96:

A writ of ward by two ſiſters, and declared that the Lord gave in Tail to *J*: their mother who had iſſue them two, and one *A*: who hath releaſed to them, without ſhewing that their father Tenant by the curteſie was dead, becauſe the ſame was to the Action, but the opinion was that all was naught by naming of *A*: in their declaration, who was not in the writ, becauſe they might have declared generally without naming her, alſo it was holden that they could not plead the Releaſe againſt a ſtranger without ſhewing of it, but againſt the parcener her ſelf who releaſed, they might &c 45 *E* 3 10 *Guards* 100.

Vide 6. E 6. 10
49 E. 3. 17.
33 H. 6. 11.
11 H. 6. 55:

A writ of Ward againſt four at the firſt grand Diſtreſſe, one made default, and three did appear, the Plaintiff declared that they did deforce him of three parts of the Land, and of the body. *Belknap*, he ought to declare according to the Writ, or to ſtay untill they all appear, or untill the fourth hath loſt by default, and the Wardſhip of the Land is as intire as the body. *Perey* contrary, for if one plaintiff be nonſuit, the other ſhall declare, of the moiety of the land, 45 *E*. 3 10 *acc*. but after day was given *prece partium*, at which day the three did appear, and a grand Diſtreſſe with Proclamations returned againſt the other who did not appear, and now the Plaintiff may aver his Writ *&c*. and the others took upon them the whole Tenancy 49 *E* 3 19 *Guards* 104.

A Writ of Ward by a Biſhop, ſuppoſing that the Anceſtor held of him, where he died in the time of his Predeceſſor, or in the vacation of the Biſhoprick, the writ ſhall abate upon ſuch challenge, 40 *E* 3 *Brief* 520.

It ſeems by the opinion of this Book, with which agrees *F N B* 143 e. 2 *E* 4 19 that if a Biſhop have Title to hath Ward, and doth not ſeiſe him, but dieth, that the ſucceſſor ſhall have the Ward, and may ſeiſe him, but ſee 40 *E*: 3 14 *contr:* See *C: Lit*: 9 10 *Eliz*: *Dyer* 277: the Executors of the Biſhop ſhall have the Ward, becauſe it was a thing veſted, but if a Church do void in the life of the Biſhop, and the Biſhop dieth, the King ſhall preſent, and not the executors of the Biſhop, becauſe it is a thing onely in action, *F N B* 33 *&* 34 *acc*: *vide* 50 *E*: 3 26 *acc*:

A writ of ward upon a gift to *H*: in Frank-marriage with the ſiſter of the Donor, *H*: had iſſue S: who had *F*: who had *J*: and *J*: had by one woman *R*: and after by another *T*: *J*: aliened, and took back an eſtate to him and his ſecond wife in ſpeciall Tail, and died, *T*. had Iſſue *G*. within age, and claimed the ward, becauſe the four degrees were paſt, and the gift was in Frank-marriage, *Habendum* to them and to the Heirs of their two bodies, yet the Declaration of Frank-marriage was good, alſo the Declaration was conceived good, although the Heir who is demanded, is not Heir to the Frank-marriage, but to the eſtate Tail late taken back, &c.

&c. for it was holden, that the Seigniory was not gone from the Donor, by the alienation of the Tenant in Frank-marriage: And it was holden, that the Diſcontinuee held of the Donor, and that the Declaration was good, although that the Frank-marriage were gone by the diſcontinuance, *P:* 31 31 *E:* 3: *Gards* 116.

In a writ of Ward, the plaintiff ſet forth in the writ, that the Defendant held by Eſcuage, but in his Declaration he ſpake onely of Homage, it was ſaid, he ſhould take nothing, although he did alledge divers ſeiſers of the Ward &c: it was but encroachment, when the tenure whereof he declareth is but Socage, but Caſtle-guard is Knights-ſervice, and he who holdeth by Grand Serjeanty, holdeth alſo by Eſcuage, *M:* 19 *R:* 2 *Guards* 165:

It is ſufficient to ſay, that he died in his Homage, without laying of Seiſin of the Services in himſelf, or any of his anceſtors, *E:* 1. *Guards* 132.

X. *Which ſhall be ſaid a ſufficient Bar in a writ of Ward.*

REſummons for the Heir againſt the Executors of the other, they ſaid, that the heir was of full age at the death of the Teſtator, and that they have fully adminiſtred, the day of the Writ brought, and at iſſue upon that, and the Plaintiff did recover, 24 *E.* 3. *Gards* 45.

In a writ of Raviſhment, the Defendant ſaid, that the Infant was with him by compoſition, and that the Plaintiff had married the Infant before, it was a good plea without making Title, 20 *E.* 3 *Gards* 41. But it is no Plea that the Anceſtor did not hold of the plaintiff without making Title to himſelf; for that plea ſhall be onely for the heir himſelf, 19 *E.* 3. *Gards* 127. But it was holden a good Iſſue, that the anceſtor did not die the Plaintiffs Tenant, 9 *H.* 6. 10. *Iſſue* 54.

Raviſhment *de filio & harede*, good, without ſaying in *Cuſtodia*, otherwiſe in a Writ of Right *&c.* the defendant ſaid, that the anceſtor did enfeoff him, without that, that he had any thing after *&c.* It is no plea, without traverſing the tenure, alſo he did not make Title to the body, 9 *H.* 6. 61. *Gards* 52. *Fitzh. N. B.* 140. 141. *Finchden* ſaith, if the Plaintiff hath poſſeſſion, the other ſhall be puniſhed in this action, whether it were by Right or wrong, if he cannot make Title to himſelf, and without a Title the Tenure is not traverſable, 43 *E.* 3. 4. 14 *H.* 4. 15. *Gards* 84. 2 *H.* 4. 14. *Gards* 72. 9 *H.* 6. 10. *acc.* Becauſe it is in the perſonalty, and damages onely to be recovered, and the Tenure traverſable without making Title.

Raviſhment of the Heir of *T.* Feoffee of *R.* if the Defendant alledge Joint-tenancy with *T.* he ought to traverſe the Feoffment onely, or the ſole dying ſeiſed, when he doth not plead it to the writ, but in bar, 14 *H.* 6. 17. *Gards* 54 contrary, and 2 *E.* 4. *Gards* 62. that he needeth not traverſe

verſe, or plead joint-tenancy in himſelf with the Anceſtor *&c.*

Raviſhment of the Heir of *H.* upon the grant of *N.* the Defendant ſaith, that *M.* ſeiſed holdeth of *N.* and took to husband *H.* and had iſſue the Heir, *H.* died, *N.* granted the Ward to the Plaintiff, *M.* died, and *N.* granted to us *&c.* and he ought to traverſe the ſole Tenure of *H.* but need not ſpeak of the firſt grant, 37 *H.*6.31.

It is a good colour in a Raviſhment of Ward, that *B.* of whom the anceſtor held, did grant him to him, and afterwards *T.* of whom the anceſtor with the Defendant held other Land, ſuppoſing that he had died ſole ſeiſed, took him, and granted him to the Plaintiff, and that we did retake him, 2 *E.* 4.27 *Gard* 72.

Raviſhment by the Lord of the Ward of the Meſne, (s) the heir of *T.* ſuppoſing the Tenure of five Acres, the Defendant ſaid, that *T.* was ſeiſed of the five acres, and held them of H. in Socage, as of his Mannor of *D.* which H. held the ſaid Mannor over of the Plaintiffe by Knights-ſervice, and leaſed the ſame to *T.* and *A.* his wife, the Remainder in Tail, the Remainder in Fee to *T.* who died, and that *A.* was in by ſurvivour as Guardian in *Nouriture &c* and that he as Servant of *A.* took the Infant from the plaintiff, and good, without traverſe, becauſe he confeſſed the five acres by one Meſne holden of the plaintiff, becauſe the Mannor of which *&c.* for the Lord may diſtrain in them, alſo how he held the five acres, and no more he ought to traverſe, for the quantity is not materiall, as to having of the Ward. But in Avowry or *Ceſſavit*, and alſo in an intruſion of marriage by *Choke*, he ought to traverſe the quantity for the miſchief of eſtoppell, but this which the plaintiff declareth. that *T.* held, and the Defendant ſhewed, that he and his wife leaſed, he ought to traverſe the ſole Tenure of *T.* and ſo he did, and it was ſaid, as the Caſe is, *T.* ſhall not do homage in the life of *A.* ſo he may well traverſe the dying ſeiſed in his homage, afterwards the plaintiff did maintain his Declaration of the Tenure of *T.* without that that, *C.* held the Lands of *H.* as of his Mannor, in manner and form &c. *M.*8.*E.*4.20 *Guards* 63.

Raviſhment by the King, as to the land, the defendant pleaded feoffment of the anceſtor, without that, that he died his Tenant, and as to the body, made title, as Lord of other Land, and it was holden, that upon a ſeiſure without Office, that I may well take the heir out of the poſſeſſion of any, 14 H4.15.*Gards* 84.or I may have an *Ouſt. le main cum exitibus*, 7 *E.*4 18.

A woman being my ward doth aſſure her ſelf to another, notwithſtanding which I may well grant her marriage over to another, and in a Raviſhment of Ward againſt the Husband, if hee plead this matter, that after the grant he married her, and that ſhe was of the age of 16 years, it ſeems a good plea; and therefore they were at Iſſue, upon the age 43:*E*:3:9 *Guards* 97 but note the Grantee of the King ſhall recover, although ſhe were of that age, *viz:* of the age of 16 5 *E.*4 10.

It is no plea in a raviſhment of Ward, that he is not heir, or that he is a Baſtard, by *Finchden*, 41 *E*:3 15 *Guards* 96: Ra-

Raviſhment by the Grantee of Guardian in Socage, the Defendant ſaid, that he delivered the Ward to the Plaintiff upon condition, that he ſhould not do waſt, and for doing that he came &c. and we did aſſiſt him, and they were at iſſue upon the Bailment in the manner &c. 33 *E.* 3. *Guards* 163.

Vide 8 *R.* 1. *Guards* 106. *It is a good bar in Raviſhment of ward of body and Land, that the anceſtor departed with the Land, and did not die ſeiſed, and of the body that the defendant claimeth the ſame by the Cuſtome of Orphanage of* London.

A writ of ward, of 20 s. Rent, the defendant ſaid that the anceſtor held the Land out of which &c. and leaſed the ſame for life rendring Rent, and granted to him for life the Rent, with the Reverſion, and holden a good Plea, 19 *E.* 3. *Guard* 40.

A writ of ward of the body of the heir of *J.* the Defendant did alledge the Land given to *J.* and *A.* his wife, and to the heirs of *J.* who is dead, *A.* being alive whoſe eſtate he hath, and it was holden a good plea in bar, 28 *E.* 3. 93. *Guard* 23.

A Writ of Ward of the body and Land, it is no Plea, that the anceſtor did enfeoff *T.* whoſe eſtate he hath, without traverſing the dying ſeiſed: yet the plaintiff did admit it, but to alledge a Fine to *T.* whoſe eſtate he hath, is good without traverſe, 4 *H.* 6 29. *Guard* 51. 12 *H* 4. 16. *Guards* 80. becauſe a dying ſeiſed after a Fine levied is not materiall.

The entrie of the heir in Religion, is a good bar in a Writ of Ward for the body, and ſo it ſeems for the Land; as if he were alledged dead, 12 *R.* 2. *Guard* 106.

The Lord claimed the Wardſhip of him who was in his mothers belly, and ſhall have it, and he ſhall be called Guardian in a writ of Dower brought againſt him, *temp E.* 1 *Guard.* 153.

Note if a man *Non compos mentis* doth make a Feoffment, and a Letter of Atturney to deliver Seiſin, yet he ſhall be adjudged to die Tenant to the Lord, 7 *H* 4. 5. *Guards* 67. but the Lord did alledge further, that after his death the friends of the Infant did enter upon him, ſo he died his Tenant, *Markham*, if the heir of an Infant enter upon his Alienee, I ſhall have the ward: So here, *Hanck* and *Thirn* ſaid, that the Guardian cannot try the Right of the Freehold (s) the validity of the Feoffment, as a Termor may do by the Statute, 7 *H.* 4. 12. *Guards* 78. but ſee before, that he ſhall have the generall averment, that he died his Tenant.

Vide 47 *E.* 3. 16. It is a good plea generally in a writ of ward, that the anceſtor doth not hold of the Plaintiff, or that the anceſtor did not die ſeiſed, without any more, and the ſpeciall matter, as Feoffment by Colluſion &c if there be any ſuch, ſhall come on the plaintiffs part to plead.

Vide F. N. B. 143. 11 *H.* 7. 12. 12 *H.* 7. 20 6 *H.* 4. 4. If an Infant ſue for a condition upon a feoffment made by his anceſtor, he ſhall be in ward for that Land, 1 *H.* 7. 9. 7 *H.* 7. 11. 26 *H.* 8. 3. 9 *E.* 4 by *Danby*.

It is no bar againſt a next of kin, that he as Lord in Socage, made Proclamation, and none would challenge the Infant, although that he do alledge that the Plaintiff was preſent, 27 *E.* 3. 79. *Guards* 22.

The Committee hath a ward by reaſon of Wardſhip fallen in his time, and

and grants it over, his grantee ſhall have aid of the King, becauſe the King remaines guardian, 12 H 4 19 *Gards* 81.

In a writ of ward, the Defendant ſaid, that the Anceſtor of the Plaintiff did levy a fine of the Land to him, and that he did render the ſame back in taile to hold of him *&c.* the Plaintiff could not aver the Tenure generally, for which cauſe he did alledge the releaſe of the Defendant to the Anceſtor; it is no plea for the Defendant that he did not releaſe &c. but he may well plead that he continued ſeiſed of the land by the fine, without that, that he did releaſe &c, 38 *E* 3 7 *gards* 87.

It was ſayd, That the Feoffment of the Anceſtor is no plea without Deed, ſee 4 *E* 2 *gards* 119.

In a writ of Ward of the body and Land, the Plaintiff declared of his poſſeſſion; Nontenure of both is a good plea, 15 H. 3. *Gards* 143. But 10 *H* 6. 12. that he ought to ſay, the day of the writ brought, nor ever after: But it is no plea in a Writ of Raviſhment of ward, 12 H. 4 11 nor in an Ejectment of Ward, 41 *E* 3 15 Nor that he doth not hold of the Plaintiff no plea in an Ejectment 5 *Ed* 3 21 But 19 *E* 2 *gards* 125 the Defendant ſaid that the Anceſtor held of him without that, that he held of the Plaintiff, and the ſame was good without more ſaying.

Ejectment by Guardian in ſocage, the Defendant ſayd, that the father did enfeoff him, without that, that he dyed Tenant to the Lord, *&c.* and admitted good, but afterwards the Court ſayd, That he ought to anſwer to the dying ſeiſed, for of whomſoever he held in ſocage, it was ſufficient as to the Plaintiff, yet he pleaded over, that the Grandfather did enfeoff the Plaintiff upon Condition, and that the Father entred for the condition broken, *&c.* 13 *H.* 4 17. *gards* 82.

Acceptance of releif or a ſurrender ſhall not ouſt the Lord of his forfeiture of marriage, 28 *E* 3 92 *gard.* 49.

Ejectment lyeth againſt me upon the wrong done by another to my uſe and my agreement to it, 38 *E* 3 18.

It is no plea in a Writ of ward, that this heir hath an elder brother, named *I* who is alive, *&c.* without making title to him to the ſame land by the award of *I*, &c. 7 E 3 51 *gards* 24.

The Feoffee before the Statute made, *Libere & quiete faciend. forinſecum ſervicium quantum pertinet, &c,* ſhall hold of the Feoffor, becauſe it it is not expreſſed to whom hee ſhall do the forraigne ſervice, 12 *H.* 3. *gards* 152.

XI. *Where*

XI. *Where the Father or Mother ſhall have treſpaſs for taking of the eldeſt Son, and another Writ for taking of the Heir, and Treſpaſs for the Lord being in poſſeſſion.*

TReſpaſs lyeth for taking of his eldeſt Son, 29 *Aſſiſe* 35 and there holden, that the guardian ſhall recover the value in marriage in a Treſpaſs at the Common Law for taking away of the Ward, 29 *E* 3 37 *gard* 160 where a Writ of raviſhing of his ward, taking of his goods, and beating of his Servants was maintained.

Treſpaſs, *Quare conſanguinem & haeredem rapuit cujus maritagium, &c.* good, without alledging that hee is yet within age, becauſe he doth not claim as Lord, but of taking his own heir, 32 *E* 3 *gards* 32.

Treſpaſs, *Quare filium & haeredem rapuit & abduxit*, good, 21 *H*6 14 12 *H* 4 16 33 H 6 55 and treſpaſs for the Mother, *Quia filium & haeredem &c.* 9 *E* 4 53 and it lyeth *Quare vi & armis filium &c.* 3 *Edw.* 4 13.

Treſpaſs for taking of his ward, *Vi & armis*, although hee hath the ward again, 11 H 3 *gards* 140.

XII. *Where a man ſhall be in Ward for a Remainder deſcended, and for a Reverſion.*

THe heir of the Leſſor for life ſhall be in ward, if the Lord hath not concluded himſelf by Avowry made upon him, But if ſuch Leſſor had granted the remainder over in fee, the heir of him in the remainder ſhould not be in ward, living the Tenant for life, for that he is Tenant to the Lord, 33 *E* 3 *gards* 8

A feoffment to the husband and wife, and to the heirs of the husband, his heir ſhall not be in ward during the life of the wife, but after he ſhall, 28 *E* 3 93 8 *E* 4 20 *gards* 63.

A man leaſeth for life, the remainder to husband and wife in taile, the remainder to the heirs of the husband, they have iſſue and dye, the iſſue dyeth, his iſſue within age at the death of the Tenant for life, ſhall be in ward, 24 E 3 33 *gards* 48.

So upon a Leaſe for life made by the Tenant of the King, the remainder over in taile, who dyeth; living the Tenant for life, the iſſue within age at the death of the Tenant for life, ſhall be in ward, 33 *H* 6 6 *gards* 17 See *P* 11 H 7 19 That there ſhall be no ward for a remainder, untill it fall, and ſee, 15 E 4 in *Skrenes* office, a good caſe.

XIII *Where*

XIII. *Where a man ſhall be ſaid Guardian for Nurture, and where he ſhall be charged as againſt the Lord, if the Infant marry, and where he ſhall have an Action for the Ward.*

A Writ of Ward againſt a woman, ſhe claimed but for Nurture, and was ready to yeild the ward, to whom the Court ſhould award, *&c.* and ſaid, that one *I* had another VVrit againſt her, *&c.* and upon day given, ſhe found ſurety to have the ward here, and at the day upon the default or one of the Plaintiffs, ſhee would have delivered him over to the other, who ſayd, that the Infant is married. *Cant*, his plea proves that ſhee was no deforciores at any time, notwithſtanding the poſſeſſion, and ſhall not be changed if the infant hath married himſelf without her conſent. Alſo it was ſaid, that the Plaintiff ought to have alledged the marriage at the firſt day, not now, but afterwards, hee did recover the infant married, and twenty pounds for the marriage, 8 *Edw* 3 45 *gards* 25.

And upon the like plea of the Defendant, the Plainiff ſaid preſently, that the Defendant had married him to her daughter, after the writ, and it was no plea for the Defendant that he was married by another, becauſe he took away the infant, and hath confeſſed the marriage during his poſſeſſion, and that he had right to recover the value, 7 E 3 *gards* 121. and 30 E 1 *gards* 156. where he was married before the Plaintiff had Title to the wardſhip, becauſe he had then an elder brother alive.

Guardian by Nurture ſhall never be charged, if the marriage be not made by him or in his poſſeſſion during the time that he could govern him, but if the infant of the age of fourteen years and more, marry himſelf, ſuch guardian ſhall not be charged, becauſe this is altogether the Act of the infant, 43 E 3 32.

By the Cuſtome of *London*, the Mayor, Aldermen and Chamberlain, are governours of the Orphans, their Lands and Goods during nonage, and their Committee brought a raviſhment of ward, and although that the cuſtome be alſo, that an infant is not bound to his guardian any longer then untill he can govern himſelf, yet the Plaintiff need not to alledge that, but the Defendant by way of anſwer *Per Curiam*, and being committed untill a lawfull age, this is intended one and twenty years, if it be not otherwiſe appointed by the Mayor, *&c.* Alſo the Writ lyeth, although the Plaintiff alledgeth that he hath married him to his daughter, for he ſhall account untill he be diſcharged, by order *&c* alſo in *London* he ſhall be in ward for his goods, although he hath no Lands, &c. 32 E 3 *gards* 31.

But *Belknap* held, That the Guardian in Socage ſhall not be put out of his ward by the Cuſtome, becauſe of his goods, &c. becauſe his authority is alſo by ſtatute, as is the guardian in Knights Service, where he who claimeth

claimeth by ſuch cuſtome, ſhall plead other matter, 8 *R* 2 *Gards* 166. and by him, the cuſtome for land ſhall not be allowed, if not in *London.*

A writ of ward lyeth againſt the Mother, who claimeth nothing but for Nurture, but not againſt the Schoolmaſter, to whom the Lord hath committed him, but againſt the Lord himſelf, 12 H 4 18 *Wards* 81.

The Defendant ſaid, That the Anceſtor held of the Prince by Priority, and he as Bayly *&c.* the Plaintiff ſaid, that the Mother being in poſſeſſion of the infant by Nurture, took the Defendant to husband, ſo he is deforceor, it was holden a good replication, 38 Edw. 3 18 *gards* 88.

A grant by guardian by Nurture of the ward is void, and he may take him again, for he hath but the government of him untill his age of diſcretion, (s) fourteen years, and none ſhall be guardian for Nurture, but the Father or Mother; but hee may deliver him to another to inſtruct him. But *Littleton* holdeth, that ſuch a grant is good againſt ſuch a grantor himſelf, but the Infant may depart &c. *Danby* ſaith, That ſuch a Guardian may take back the infant after that he hath diſcharged him *&c.* 8 E 4.7 *grants* 21.

See *P* 22 E 3 *Counterplea of voucher* 78. where the Grantee of a ward by Nurture of ward, ſhall vouch.

XIV. *Raviſhment of ward for him who hath married the Heir after* Annos Nubiles, *and where he ſhall have a Writ, the Infant being married in the life of his Father.*

RAviſhment by the Committee of an Orphan by cuſtome to him as next of kin, becauſe that the infant had married his daughter, the Defendant ſaid, that the infant was of the age of ſixteen years, *&c.* and had confeſſed he had the profits of the marriage, *&c.* yet it ſeemed the writ was good, becauſe he is charged to the Mayor, *&c.* and the age ſhall be adjudged by him, and to that he ſhall be compelled by a writ out of the Chancery if he will not *&c.* and by intendement he ſhall have the ward till the age of one and twenty years. Yet *Seton* ſaid, That guardian in Knights ſervice had been barred by ſuch plea, becauſe hee had the effect of the wardſhip, by the marriage, 32 E 3 3 *Gards* 31.

In Ravishment, The Defendant ſayd, that he held of him by poſteriority, and it was covenanted between us and our grantor, that the Infant ſhould remain with us, and he did ſo, and you had married him before, it was good without making him Title, and the Plaintiff took nothing by his writ, 20 E 4 *gard.* 41:

Ravishment maintained againſt him to whoſe daughter the Infant of five years in the life of his brother was married, with averment that hee is yet within age of conſent (s) fourteen years, and took his homage in Court, 30 E 1 *gards* 156.

XV. *Where the heir ſhall be twice married by the Lord, and where by the Lord after he hath been marryed by his Father, or by the Raviſher.*

WHere it was found for the Plaintiff, and that he did not know if married, and the body of the Infant in another county: By the opinion, no judgment ſhall be untill it be found or confeſſed, for if hee be not married, the Plaintiff ſhall have the marriage and alſo the value, if the Judgment be given for him, for the Defendant whoſe title is avoided, cannot have it; and tender of the Plaintiff ſhall be effectuall *&c.* 16 *E* 3 *Gards* 107.

Raviſhment, found that the Defendant did raviſh the heir being of the age of fourteen and more, and did affye him to *A.* his Daughter, and that before the age of one and twenty years, the Plaintiff got, &c. and at the age of eighteen years married him to *M.* the marriage did continue untill by means of the Defendant *A* ſued a divorce for the precontract, and the Plaintiff did appeal to the Pope, which doth yet depend and that now the heir is of full age, *&c.* and by award, the Plaintiff did recover damages of forty pounds, for the raviſhment, and a hundred Marks for coſts, but nothing for the marriage, for the matter by him done is not defeated pendant the Appeal: Alſo it is not found that he was married by the Defendant, ſo out of the caſe of the Statute, &c. 27 *H* 6: *gards* 118. and *Danby* there ſaith, The Lord in that caſe ſhould recover the value faire, as againſt the raviſher who hath married *&c.* and if after the heir (being yet within age of conſent) refuſe the ſaid marriage, the Lord ſhould tender him another, and recover the value again upon refuſall &c.

Vi C. Littleton, 79 acc- vi. C. 9. part 132. in *Holls Caſe*, If the King marrieth a woman, who is his Ward, *Infra annos nubiles*; and before the age of conſent; the husband dyeth, the King ſhall have the marriage again, becauſe the firſt marriage was not compleat. Contrary of a common perſon: *C. 6 part in Ambroſe Gorges caſe, vi. C* 5 *part*; 102. in *Watſons caſe*, The Guardian marrieth his Ward, and after they are divorced *Cauſa precontract.* yet he ſhall not have the marriage again.

See 12 *R* 2 *Damages* 130 *acc.* and that the Raviſher ſhall not looſe but the ſingle value, and that he ſhall have, although the heire might diſagree as before, and then he ſhall alſo have the marriage, 21 *E.* 3. *Judgement* 150. See 43 *Edw.* 3. *Judgement* 102. and 19 *Edw.* 3. *Judgment* 123.

Note by the Court, If a man dye, his heir being married, and yet under the age of ſeven years, yet the Lord ſhall have the Wardſhip of the body, becauſe no conſent can be, for which the other did aver, that he was of the age of ſeven years at the marriage &c. 12 *Edw.* 1. *Gards* 138.

But

But if the Infant marry at 4 years, his anceſtor dieth, he not yet of 14 years, the Lord ſhall have the Wardſhip of his body, untill that age, becauſe he may diſagree, but if then he do aſſent to the marriage, he ſhall forfeit nothing to the Lord *&c.* and it was ſaid, that if the woman die before that ſhe cometh to the age of conſent, the Lord ſhall marry him again, *M.7.H.6.11.* 13 *H.3. Wards* 147. and *temp. E.1. Gards* 128. and 30 *E.1. Guards* 156.

Vide C.6. part 22 *acc. Fitzh. N.B.* 143. *acc.* but ſee 7 *H.6.11.* in the Caſe of the King, a tender was made to one for marriage and was diſcharged, for the marriage was not void, then *Quære* if the Lord ſhall have the Wardſhip.

The Lord who hath married the Heir, ſhall not marry him again, although that the wife die during his Non age, *A.* 13. *E.* 1. *Guards* 137. Otherwiſe it is, if ſuch firſt marriage was by the Raviſher, *temp. E.1. Action upon the Statute* 96.

XVI. *Where the Lord ſhall have the Ward, notwithſtanding a Feoffment by Colluſion, or where Colluſion ſhall ouſt him of the Ward.*

THe Lord ſhall not aver the Feoffment to be by Colluſion, without ſhewing how, for which he ſaid that the Tenant did enfeoff *W.* to find a Chaplain during his non age &c. and afterwards to reinfeoff the heir, and to render more then the Land is worth, the Tenant ſhewed the Deed to be abſolute, and that *W.* did enfeoff two, who leaſed to him for life, and that the Plaintiff had accepted the ſervices of them, and homage of one of them, and the plaintiff traverſed the acceptance of the Homage onely, 32 *H.* 3. *Guards* 33.

But in a Writ of ward of a Rent, where the Defendant pleaded a Grant to him for life, the plaintiff averred the ſame by Colluſion without ſhewing how, 19 *E.* 3. *Guards* 40. But there is no challenge, but 31 *E.* 3. Colluſion 29. It is holden that he ſhall ſhew how Colluſion, and there it ſeemed, that if the Feoffee did enfeoff a ſtranger, and not the Heir, the Colluſion is gone.

If the Feoffee by Colluſion doth give the Land back again to the Feoffor for life, the remainder to the Heir *bona fide*, the Lord ſhall not have the ward, for the Colluſion ſhall be averred and tried, and it is not apparent by *Priſot*, *vide* 33 *H.6.17.* and 18. and *Priſot* there ſaith, If ſuch Feoffee after the death of the father doth enfeoff a ſtranger *bona fide*, yet the Lord ſhall have the Ward upon averment &c. becauſe his Title doth accrue before, and the Remainder to the Heir upon a Leaſe or gift in Tail to a ſtranger, is not Colluſion, Nor a Feoffment to the heir and a ſtranger, and as heir of the heir, is not Colluſion, 33 H.6.17. 12 H.4.13. *Guards* 79.

But *Moil* ſaith, where the Tenant enfeoffeth his eldeſt ſon and his wife that this is double Colluſion, 31 *E.*1.*Guards* 155. ſo it ſeems Colluſion a verrable upon ſuch Feoffments.

20 *Eliz. Dyer* 361. The Tenant of the King did enfeoff his brother, to the intent to enfeoff his Heir male at full age, when at the time he had no iſſue male, the Father died, and then a ſon was born, this is Colluſion, and the queſtion was, whether he ſhould be in ward for the whole, or but a third part, *Vide C.* 1 *part* 47. 10 *Eliz. Dyer* 268. but ſee *C. Lit.* 78. that now by the Statute of 32 and 33 H. 8. for his body, and the third part of the Land.

In Ward the Defendant ſaid, that the anceſtor did not die ſeiſed, the plaintiff, that he made a Feoffment to re-infeoff the heir of full age, he ſhall not conclude ſo he died ſeiſed, but ſhall conclude Colluſion, although the Defendant ſaith, that it was without condition, 47 *E.*3.16 and 31 *E.*3.*Guards* 33. he ſhall aver the ſame againſt a ſimple deed, and 7 H. 4.15. againſt a Fine upon Releaſe, and the iſſue ſhall be upon the Colluſion, but not if the Feoffment be upon Condition &c. 19 H. 6. 30.

See *C.* 10 *part* 80. in *Lowes* Caſe, If the eldeſt ſon purchaſe Land of his father, *bona fide*, for a valuable conſideration, he &c. ſhall not be in Ward, nor pay primer ſeiſin: So *C.*7 *part* 77 *Curſons* Caſe, if the Grandfather in the life of the Father convey Land to the Grandchild: So *C. Lit.* 78. if the conveyance be to any of his collaterall blood, or Baſtard-children.

In a Writ of Ward, the Defendant pleaded a gift in Tail to him by the anceſtor, the Plaintiff ſaid, that it was rendring a Roſe the firſt 8 years, and afterwards 40 l. ſo Colluſion, and the Defendant could not aver the tail without ſhewing a Deed, and that was rendring, *ut ſupra*, yet he ſhall aver it *bona fide*, 4 *E.*2.*Guards* 119. and note, the ſhewing of the Deed is by the words of the Statute, which wills *Quod inquiratur per teſtes nominatos in chartis & alios* &c. *Marlebridge cap.*7.

Colluſion ſhall not be averred upon a gift to the eldeſt Son in Tail, the remainder over, 27 *H.*8.7. and 10.

Note the opinion of *Gaſcoigne* and others, If a man who holdeth of the King, and another, makes a Feoffment of the Land holden of the other by Colluſion, the ſame is not remedied by the Statute, becauſe no Wardſhip is loſt thereby, and the King ſhall not have the Wardſhip, 9 *H.* 4.7. *Traverſe* 15.

XVII. *Where a Ward ſhall be recovered by Proclamation.*

UPon Default of the Defendant at the Proclamation returned, the Plaintiff ſhall recover the value of the Land, and the marriage, and damages if &c. and a writ ſhall be to the Sheriff to enquire of the value, and

and the time which he hath occupied the Land, 42 *E.* 3.1. *Guards* 97. and upon one returned dead at the Proclamation, and the others warned which do not appear, Reſummons awarded againſt the heir of the dead, who appeareth and ſaith nothing, by which the Plaintiff ſhall recover againſt them all, 9 *E.*4.15. *Wards* 15. and a Writ awarded to inquire of the damages, but the Court would adviſe, if the heir being within age, ſhould render damages.

Herle gave Judgement upon default at the Proclamation *Salvo jure* &c. and awarded a Writ to enquire of damages. *Hill* ſaid, that he who loſeth the Ward by Proclamation ſhall never have an action, notwithſtanding the Statutes which ſpeak, *Salva ſibi alia actione* &c. 16 *E.*3. *Guards* 108.

A ward ſhall never be recovered by Proclamation, if there be not three Counties, and three Proclamations, by the Statute of *Weſt*, 2 *cap.*35. and if all the Proclamations are not made for the ſhortneſſe of time, all is void, and an *Alias* ſhall iſſue forth to begin again &c.2 *H.* 4.1. *Return de vic.*41. but it ſeems there ſhall not be new Proclamation, but Proceſſe at the Common Law, 3 *H.* 4. 6. And note, that the Proclamation ſhall be in the County onely where the Writ is brought, 17 *E.*3.70.

XVIII. *Where the body of the Heir ſhall be in ward, and the Lands, and where the Lord in Knights-ſervice ſhall have no ward, and where a man ſhall be in ward after his full age.*

IF a man marrieth his daughter being within age to a man of full age, and dieth, his Land ſhall be in Ward, 20H. 6.15.

If one be found heir to the Kings Tenant, and hath Liverie becauſe of full age, and after, another is found heir &c. yet there ſhall be no reſeiſure if he be alſo found of full age, 12 *R.* 2, *Liverie* 28.

In an aſſiſe of *Moortdanceſtor*, the Tenant juſtified as Lord by the nonage of the ſame plaintiff, he ſaid that the ſame Tenant granted to him, and his heirs, that they would never claim any thing by reaſon of Ward, in the Lands, which his father held of him, nor in the marriage &c. and that not being denied, the aſſiſe was awarded, 19 *E.*2. *Avowry* 224.

Where the heir entreth into Religion, there is no Wardſhip, 12 *R.*2. *Guards* 106.

If the Kings Tenant die, his daughter and heir of the age of 15 years, it was holden ſhe ſhall be in Ward, but if ſhe had been within the age of 14 yeares, ſhe ſhould be untill 16 yeares to make the tender, *Weſt* 2. *cap.*22. *Forteſcue*, if ſhe be married in the life of her father within age, ſhe ſhall have her Lands at 14 years whether the Husband be within age, or of full age, becauſe no marriage can be, 35 H.6.49. and

35 H

35 H. 6.42. *Guards* 7: Where by the Juſtices, the heir female being in ward to the Lord by priority, may well enter upon the Lord by poſteriority at 14 years: alſo the grantee of the King ſhall not have advantage to tender her a marriage after 14 years, nor the King himſelf, but ſhe ſhall have livery, alſo ſhe ſhall pay the forfeiture for marying her ſelf within the two years after the 14 years, againſt the agreement of the Lord, by *Priſot*, *Markham*, *Yelverton* and *Danby*, but *Forteſcue* was contrary.

Vide 35 H:6:41: by *Wangford*, If a man holds Lands of two, one by Priority, the other by Poſteriority, and dieth, his daughter within 14 years: he who holdeth the Land by Priority, ſeiſeth the Wardſhip of the body and Land, and the other ſeiſeth the Land holden of him, when ſhe cometh of 14 years ſhe may enter into that Land; for none ſhall have the Land till 16 years, but he who may tender her a marriage.

But ſee *F. N:B*:256.257: if the heir female hath Land in *Capite*, and Land in Socage holden of the King, ſhe ſhall not have the Socage Land at 14 years, but ſhall ſtay the two years, ſo as ſhe ſhall ſue forth Livery.

Alſo it was agreed by the Court, that ſo ſoon as the Lord hath married her after the age of 14 years, ſhe ſhall have her Land preſently: So if ſhe were married before 14 years, ſhe ſhall have her Land at 14 years, although her husband be dead before, ſo the two years are given for the Tender, becauſe the Tender before that age is void. It was alledged that *Bracton* ſaith, that the age of male and female, is all one, the Court ſaid, it was never holden for authority in our Law.

The Heir female being of the age of 14 years at the death of her anceſtor ſhall not be in Ward, becauſe that is her age, 39 *H.6. Guards* 67. *Lit.* 22. & 35 *H* 6.40. *acc.*

XIX. *Where a Right, or Raviſhment of Ward ſhall be maintained at full age, where after the death of the Heir.*

A Writ of Right of Ward ſhall abate, if the heir come of full age depending the Writ, not ſo of Raviſhment of Ward, although he be of full age before the Writ brought by *Danby*, 9 *E.*4.50 11 H.6.8. but the Reporter ſaith, it ſhall be a good plea, that the heir was of age, the day of the Writ &c. 9 *E.*4.50.

Raviſhment of Ward ſhall not abate by verdict, finding that the heir is now of age &c. 27 H.6. *Guards* 118. but the party ought to declare, that he is yet within age, 37 H.6.7. *Guards* 10.

A writ of Ward of the Land, ſhall not abate by the death of the Infant depending the Writ, otherwiſe it is of the body, 31 *E* 1. *Guards* 130. but it ſeems it ſhould abate before the Statute of *Weſt*, 2 *cap.*35. 11 H 6. 8. *Aſſiſe* 9.

XX. *Wher*

XX. *Where tender of Marriage is materiall, where not.*

IN forfeiture of Marriage, the Plaintiff declared of the Tenure, and Tender, the Defendant ſaid, that the Plaintiff did render back to him his land, and accepted of his releif, *&c.* and was driven to anſwer over, but that Challenge was entred at his prayer; wherefore he ſaid, he was of full age at the time of the Render, *&c* 28 E. 3. 92. *Guards* 49.

But ſee 31 *Aſſ.* 26. Action upon the Statute 52. That the Lord who hath ſurrendred unto the Heir ſhall not have the land after for the value by Retainder. And note there, that in intruſion of marriage the Lord need not to alledge a Tender, as he muſt do in a forfeiture of marriage. Alſo in a *valore* of marriage, he need not alledge a tender, becauſe the ſame is *mero jure*, 3 H. 7. 9. *Guards* 68. But iſſue ſhall be upon the Tender in intruſion of a Ward, 40 E. 3. 6. and that tender is not good without ſight of the woman. See *F. N. B.* 141. Tender alledged in the one Action and in the other.

Vi. C 5 *part*, *Palmers* caſe, The Guardian ſhall have the ſimple value without tender.

28 *E.* 3. 92. In forfeiture of Marriage, the Plaintiff was compelled to ſhew the woman.

Markham ſaith That the Lord ſhall have the value of the marriage without any tender made.

Forteſcue, In a forfeiture of marriage he ought to declare of the Tender, but it is not traverſable, but in a *valore maritagii*, the tender is materiall, *&c H.* 6. 52. *Wards* 71.

Iſſue was taken upon the tender in a forfeiture of marriage, 16 *E.* 3. Action upon the Statute 14. and 14 *E.* 3. Action upon the Statute 16, and 17 *H.* 3. Action upon the Statute 27. It is no plea for the heir that the Plaintiff may recover againſt the Ravisher, if he do not deny the Tender.

XXI. *VVhere the Lord ſhall have the double value of the Marriage againſt a ſtranger, where the ſimple value, and where the value twice againſt two, and where he ſhall have the land againſt the heir, where the value, where the double value.*

IT was found that the Kings Tenant had two Daughters, one within age, but they know not whether ſhe be married, Judgment was given, that he ſhould recover the Ward, and the value, if ſhe were married, but not the double value: And a Writ was awarded to the Sheriff for the body, and another to diſtrain the party for the body, 47 *E.* 3. 19. *Guards* 103.

103. But where it was found ſhe was unmarried, and afterwards alledged that mean between the Verdict and the Judgment, ſhe was married; yet the Judgment was to recover the Ward and not the value, *&c.* 14 *E:* 3 *Judgment* 157.

And where the Jury doubt as before, and the Defendant ſaith, that ſhe is not married, the Plaintiff ſhall recover the Ward, and Damages without the value, becauſe he doth not maintain that ſhe is married And the Plaintiff ſhall not recover in a Writ of Ward the value againſt the Vouchee, but againſt the Defendant, and he over, 16 *E:* 3 *Guard* 107.

Valore Maritagii maintained by the Grantee of the King, although that before upon a *Scire facias* againſt him be held over by a Ward, becauſe not ſatisfied of the marriage; and at another time he did alledge Seiſin in the Kings hands, which was proved for the Farm of the Guardianſhip, ſo his default: But untill the King hath made Livery to the Heir, the Grantee ſhall render the Farm of what age ſoever the Heir be, and that Farm ſhall be intended the very value, *&c.* 43 *E:* 3. 2 But ſee there, that upon Award or compoſition, that another mean Lord ſhall hold for the value of the Marriage, it ſhall be adjudged according to that which he might have levied by the time, *&c.*

And note, that when the Lord hath cauſe to have the double value, it is in his Election to retain the land for it, or to have an Action of Forfeiture of marriage to recover it, for it may be that the land holden of him doth not amount to half the value, *&c* 18 *E:* 3. 18. Action upon the Statute 15.

Vi. C. 4. part in Sir *Miles Corbets* caſe, *ac.* 15 *E:* 4 5. 7 *H:* 6. 12. But if the Lord holdeth the land for the ſingle value, the profits received are only as a pledge, untill the Heire ſatisfieth to him the value of the Marriage, where he holdeth for the double value, the profits are part of the value.

The Lord by Poſteriority ſhall never have Forfeiture of Marriage becauſe he hath nothing to do to meddle with the body, 7 *E:* 2. Action upon the Statute 33.

In a Writ of right of Ward, Iſſue being upon the Priority, it was found for the Plaintiff, and that the Heir within age of fourteen years is married, and damages given. And the queſtion was, whether the damages ſhould be three hundred pounds, or a hundred pounds; and there *Stone* held that he ſhould not have Judgment for three hundred pounds, for then perhaps he muſt have the value twice, 21 *E:* 3 *Judgment* 150.

XXII. *Where*

XXII. *Where the Lord may chooſe to have the Services, or the Ward of his Tenant.*

IF the Meſne dieth, his Heir within age, the Lord may diſtrain the Tenant, and avow upon the Meſne for the ancient Services: But if the Meſne be attainted of Felony, the Lord ſhall not have but the Services which are due to the Meſne, 1 *E*:3.6. *Avowry* 68.

So if my Tenant leaſeth for life and dieth, his Heir within age, I ſhall have Election, *&c.* but upon Avowry made upon him I ſhall be ſtopped to claim the Ward, 33 *E*:3. *Guards* 8.

XXIII. *Where the Guardian ſhall put out the Termor, or Tenant by Statute, or Elegit.*

BRian ſaith, that the Guardian ſhall put out the Termor of Lands, not of wreck of the Sea, nor of an Advowſon granted for years: Alſo he ſhall not put out Leſſee for life: But if Tenant in tail of a Mannor with an Avowſon doth diſcontinue, and after preſenteth unto the Advowſon by Uſurpation, and grants the next avoidance over, and dieth: that the Grantor ſhall put out the Grantee, 5 H:7.3 6. *Guards*. 69. But afterwards hee held that the Lord ſhould not ouſt the Grantee of the next avoidance, *& alii contra, vi.* 15 H.7.7. *Guards* 158. Where Grantee of the third Advoidance ſhall have the fourth againſt the Lord, becauſe he could not have the third againſt the wife, Tenant in Dower: And it was there holden, that the Guardian ſhould put out the Termor, becauſe this Condition in Law ſhall be as a Condition in Fait. And there *Brian* held, that he ſhall not put out the Termor; But others againſt him.

Covenant by a Termor, againſt the Heir, becauſe he was ejected by the Eſcheator, for a Tenure found of the King, *&c.* And he was driven to alledge in certain, that he was ejected by Title, 3 *E*:2. *Covenant* 6.

So the Aſſignee of a Termor ejected by the Guardian, ſhall have Covenant againſt his Leſſor, if he hath a Deed, and he over againſt the heir, if he be ejected by Title, 31 *E*: 1. *Covenant* 26. and that at full age of the Heir *temp. E*:1. *Covenant* 31. So if he be ouſted by Colluſion found, as where a Feoffment was, rendring the firſt year a Roſe, and afterwards ten pounds, *&c.* 18 *E*:3. *Covenant* 7.

And where Leſſee for life and ten years over, grants the Term and dieth, his Grantee being put out by the Lord ſhall have Covenant, 19 *E*. 2. *Covenant* 25. And although that the Termor who is put out, do purchaſe it again of the Lord, yet he ſhall have Covenant againſt the Heir at his full age, *&c.* 34 *E*.1. *Guards* 129.

An Aſſiſe of a Rent granted by the Anceſtor, the Heir in Ward prayeth his age. *Hill*, It hath been holden that the Guardian ſhould hold diſcharged, but afterwards it was aſſented by Parliament, that the Aſſiſe ſhould be taken, 3 *E:3. Aſſiſe.* 176. And *Herle* held that he ſhould hold charged, 3 *Aſſ.* 1. *Aſſiſe* 182.

It was holden, that the Guardian ſhall not put out Tenant by *Elegit*, but a Leſſee for years he might, 1 *E:* 3. 3. *Guards* 13.

And it ſeems alſo, that he alſo ſhall put out Tenant by Statute-merchant, who hath execution in the life of the Anceſtor, for the Title of the Lord is elder, and their right is ſaved to them at the full age of the Infant, *&c. quare* 36 *E.* 3. *Guards* 9.

It ſeems by the Statute of *Mercatoribus*, That execution ſhall not be ſued againſt the Heir untill his full age: And therefore 33 H. 6. 47. thinks that the Guardian may put him out, *quare* of Tenant by *Elegit*.

XXIV. *Where the Donor or his heir ſhall have the wardſhip of the heir in Frank-marriage, within the four degrees.*

THe degrees of Frank-marriage ſhall be accounted from the Donor to the Donee the firſt, &c. and the heir of him who is in the foure degrees, ſhall hold as the Donor, and if he in the third degree alieneth, and takes back to him and his ſecond wife, and hath iſſue by the firſt, yet the heir of the ſecond wife ſhall be in ward, as iſſue of the taile after the fourth degree, for this doth end in the iſſue of the firſt wife, and it was ſaid, that by no deviſe of the Donees, &c. in frank-marriage, the Seigniory of the Donor ſhall be diſcontinued, becauſe he hath no action, no remedy to recontinue it, 1 3 *E* 3 *gards* 116.

And Homage done by Tenant in Frank-marriage, ſhall not bind the heirs within the foure degrees, becauſe that the Law hath diſcharged him of wardſhip and ſervice, *en. temp. E* 1 *Gards* 135 But he ſhall do fealty, by *Littleton* 15.

XXV. *Where the heir ſhall be in ward for Lands to which hee hath right, or to which he cometh by his own Act, or by the Act of the next of kinne.*

IN a Writ of ward, The Defendant ſayd, that the Anceſtor did not dye his Tenant, the Plaintiff ſayd, that the Anceſtor was ſeiſed, and became of *Non ſana memoria*, made a Deed of feoffment and Letter of Attorney

torney to deliver ſeiſin &c, and after his death the heir did enter by his next of kinn, *&c.* and for that the opinion was, that he dyed his Tenant, becauſe the livery by the Letter of Attorney was void, but the heir who recovereth in *Non compos mentis*, ſhall not be in ward, 7 *H* 4. 12. And note, he ſhall not be in ward by recovery in no action anceſtrell where his entry was not lawfull, as in a Formedon, *ibidem*, But ſee that the entry of the heir is lawfull upon alienation made by the anceſtor; who was *Non compos mentis*, as it appeareth, 34 *H* 6.45. tnd by *Perkins* 5. and therefore it was holden, that upon a recovery in *Non compos mentis* or *Dum fuit infra ætatem* he ſhall be in ward, 11 H.7. 12. If the heir recover in a *Mortdanceſter*, he ſhall be in ward. 12 *R* 2 *Livery* 28.

If an infant alieneth and dyeth, and his heir within age entreth, he ſhalbe in ward, 7 *H* 4. 12 but if hee do not enter, the Lord ſhall not enter for him, 6 *H* 4 4 And if the heir enter for a condition broken, hee ſhall be in ward, or in that caſe, if the next of kinn enter for him, 39 *Ed.* 3 36 *gards* 92. 11 *H.*7.12.

Diverſe Parceners did recover in a *Formedon* as upon abatement, and one within age, and in ward to the King, whereas in truth, he againſt whom &c. did diſſeiſe the Tenant by their Covin, &c, and the others being impleaded had aide of the third in the ward of the King, notwithſtanding that the Demandant did tender to averr as above, &c. and that there was no gift, 11 H.4.60.

Hankeford ſaith, If the Tenant make a Feoffment by colluſion, the Lord ſhall not have the wardſhip of the body, untill he hath recovered the land, and if the heir of the Diſſeiſor be in, and the Diſſeiſee dyeth, the Lord ſhall not have the wardſhip of the heir untill the hath recovered the Land, which the court agreed, 22 *H.* 4. 13. *gards* 79 *vi.* 15 E. 4 11.

But its conceived, That the Lord ſhall have the wardſhip of the heir of the Diſſeiſee who dyeth in the life of the Diſſeiſor, before a Diſcent caſt; becauſe he may aver that he dyed his Tenant, 14 *H* 4 15 *Iſſue* 138 But after a diſcent is caſt, it is clear that the heir of the Diſſeiſor is Tenant to the Lord, and he ſhall be in ward 48 E 3 8 *Avowry* 83. 19 E 3 64 and 36 E 3 *Gards* 10. Where it is holden a good plea, that the Anceſtor had not any thing at the day of his death, , and that he ſhall not ſeiſe the body of the heir of the Diſſeiſee, untill he hath recontinued the Land.

See *C* 3 *part in Butler and Bakers* caſe, That the heir of the Diſſeiſor and Diſſeiſee ſhall be both in ward.

A holdeth two Mannors of two Lords by ſeverall ſervices, Knights ſervice, and makes a feoffment and takes back at one day to him ſeverally by fine for his life, the remainder to his heir in taile of one, and the remainder of the other unto his heir, and to his wife in taile, and dyeth, the heir entreth into both at one day: and diſcontinueth that which hee hath in joynture after the deceaſe of his Mother, and dyeth: Now if the iſſue recover that, or re-entreth for the Mortgage mony paid, or if the diſcontinuee ſurrendreth to him, or enfeoffeth him &c. The Lord who firſt lights upon

upon it shall have the wardship of the body, &c. 33 E 3 *Gards* 162.

See that Tenant in taile and his issue shall do homage to the Donor, 8 E 4 *Avowry* 36. 7 E 4 27 and the Donor shall have the wardship of the heir of the Discontinuee, yet he shall not be driven to avow upon him, 20 *H* 6 9 *Avowry* 12 41 E 3 8 *Avowry* 65 48 E 3 8.

Tenant in tail of a Mannor with an Advowson doth discontinue &c and afterwards usurps to the advowson and dyeth, the Donor seiseth the ward, and presents to the Church, putting out the grantee of the Tenant in taile, of the next avoydance, 5 *H* 7 36 *gards* 69. The opinion is, That the Donor shall have the wardship of the heir of the Tenant in tail, which hath discontinued, 18 *E* 4 11. *Quere*, for if my very Tenant alieneth, and dyeth before notice given unto mee, yet I shall not have the wardship of his Heir 2 *H* 4. and here there is no right remaining to the Heir.

XXVI. *Where the Lord shall seise his ward, and take him although he be in the service of another.*

THE Lord may well seise the heir within age, although he be retained in service in the life of his Father, 14 *H.* 4. 31. *Issue* 139.

Ravishment of an heir female, the Defendant did alledge, that before *&c.* she was retained with him; *&c.* the plaintiff took her, and he re-took her, without that he will averr, that at the time &c. shee was of the age of fifteen years &c. this is a good justification. But *Danby* saith, that hee ought to traverse, without that, that he did ravish her within age, 8 E 4 22 *gards* 64.

Catesby saith, That if the guardian by nurture, command the Heir to go out of his house, and he will not give him victualls, that he cannot afterwards take him again out of the service of another: *Danby*, That he may well do, 8 *E* 4 7.

XXVII. *Where the Recovery of one shall give advantage to the other, although he was severed before, and where he that recovereth shall have all alone.*

A Writ of Ward by two Parceners, of the body, one doth recover, the other being severed, yet she shall have an account for the profits of the moietie against her who recovered, but if she hath released to the defendant, she which recovered may plead this release in bar against her, and that without shewing by reason of the privity, but cannot maintain an action against the Defendant in her name, without naming her

her who hath the Releaſe by reaſon of this Releaſe by *Finchden*, who ſaid, that they recovered in common, notwitſtanding the Releaſe, and that pleaded againſt the one ſhall not hurt the other, but ſhe may maintain the Action without naming of him who hath the Releaſe, declaring onely of Tenure, and not of the diſcent, and ſo is it abridged by *Fitzh.* and that the Defendant may well plead the Releaſe of the other who releaſed, being named, 45 *E.* 3. 10 *Guards* 100. and the ſame caſe for accompt, *vide Accompt* 36.

Kirton ſaith, that in a Writ of Ward for the body by two, If the one be non-ſuit, the other ſhall recover the whole, and that ſhall ſerve his companion alſo for their common uſe, ſo if one Defendant make default, the other ſhall ſave the whole to their common uſe &c. 49 *E.* 3. 19 *Gards* 104.

Thorp ſaith, that if two Parceners bring a *Quare impedit*, and the one is Non-ſuit, the other ſhall ſue for the whole, becauſe it cannot be ſevered, and ſhall have a Writ to the Biſhop for them both, and their common Clerk ſhall be received *&c.* 38 *E.* 3. 35. *Quare impedit* 126.

XXVIII. *Where Proceſſe ſhall iſſue to have the heir in Court, to deliver to whom the Court ſhall award, and who ſhall have the cuſtodie pendant the Writ.*

RAviſhment in the County of *D.* the plaintiff doth ſuggeſt in Chancery, that the Infant is in the County of *N.* and hath a Writ by the Statute from thence to have him in Court, to be delivered to whom the Court ſhall award, and at the day the Sheriff hath him readie &c. and becauſe the originall was not ſerved, he was delivered to the Defendant again, 34 *E.* 3. *Guards* 164.

It was holden, that the Infant ſhall be delivered to the Sheriff depending the ſuit, untill the matter be diſcuſſed, and if he deliver him to the defendant, the plaintiff after Judgement for him ſhall have a Writ from hence againſt him who hath the poſſeſſion, or againſt the Sheriff, and ſhall not be put to a new Writ of Raviſhment &c. 12 *H.* 4. 6. *Garniſhment* 22.

XXIX. *Where the Lord by his act ſhall conclude himſelf to have the Ward.*

BY acceptance of Homage of the eldeſt Son of the Feoffee in the life of his father, the Lord ſhall be eſtopped for to claim the Ward after, but not ſo of fealty, Rent or other Service recovered out of a Court of Record, 36 *E.* 3. *Guards* 11.

But *Priſot* held the contrary, and that he ſhall not be eſtopped, becauſe that

that he could not refuſe the Homage after notice of the Feoffment, 33 *H.*6 17 *Colluſion* 36. but 31 *E.*1. *Guards* 155. there is a difference put of acceptance of homage in the life of the Father, and after his death, and in the firſt Caſe he ſhall be concluded, and in the laſt not, becauſe the Statute of *Magna Charta* doth tie him to accept homage before he hath the Ward, and the acceptance was but of Fealty, but 32 *E.*3 *Guards* 33. where the acceptance of many Services was alledged, the Lord ſhall anſwer onely to the acceptance of homage, as that he accepted of it for other Lands, and ſo the acceptance of it ſhall bind.

The Tenant of the King made a gift in Tail and died, the King doth accept his heir for his Tenant, *Fitz.* conceiveth, that he ſhall not be thereby concluded, to take the iſſue in Tail in Ward by the Statute of 34 *E.*3. *cap.*15. *F.N.B.* 143. but ſee the contrary to that 4 *H.*6.20. *Guards* 50. and that the acceptance of the Services ſhall be intended homage, *Babington* and the Court ſo adjudged, but *Fitzh.* thinks it no Law, but that the King may well chooſe the Tenant in Tail for his Tenant, as he did, 47 *E.* 3. in a *Quare impedit*, as *Fith.* there alledgeth it.

The Lord ſhall not have the Wardſhip of the heir, untill he hath accepted his homage, becauſe by that he hath the Ward, he hath loſt the Relief, and in lieu of Relief he ought to take the homage 13 *E.*1. *Gards* 163. but the Donor ſhall have the Wardſhip of the Iſſue in Frankmarriage, without taking homage of him within the four degrees &c. 13 *E.* 3. *Guards* 142.

XXX. *Where the Succeſſor of a Biſhop ſhall have a Ward fallen in the time of his Predeceſſor.*

IF the Tenant of the Biſhop dieth, his Heir within age, and the Biſhop dieth before Seiſure, the Succeſſor may well ſeiſe the Ward, have a Raviſhment of Ward, and alſo a Writ of Right of Ward by ſome, 2 H. 4. 19. *Guards* 73. agrees of the Right of Ward, *M.*6 *E.*2. *Wards* 120.

And the Executors of the Biſhop ſhall not have it, but where the Biſhop ſeiſeth; nor the King ſhall not have if the Tenant dye, not the Temporalties being in the Kings hands, 40 E:3.14. *Brief* 522.

But the King ſhall recover an Advowſon which voids in the time of the Biſhop againſt his Succeſſor, *M:*24 *E:*3. *Quare Impedit* 11.

XXXI. *Where*

XXXI. *Where the King ſhall not have the Ward although he hold of him, and where he ſhall not have the Ward of a Tenure of him by Eſtoppell,* &c.

A Mannor was ſeiſed into the Kings hands, becauſe the Tenant did adhere to the Scots, and he gave it to *T.* to hold of him, who dyed, his Heir within age: One *S.* of whom the Mannor was holden before, ſeiſed the Ward, and was put out by Office found: And at his Suit in Parliament it was awarded that he ſhould have again the Ward, and the Patent was repealed, 46 E.3. *Petition* [19. ſee 47 E. 3. 21. a difference where it cometh to the King by a common Eſcheat, and where by Forfeiture of Ward, and the latter caſe, his Patentee held as of his Crown.

Diſceit by the Lord of a *Præcipe* in *Capite* brought of the land, *&c.* he ſhall not recover damages according to the value of the Seigniory, becauſe he may have it again by Petition. And *Stone* ſaid, That the King ſhall not have the Ward by reaſon of ſuch a Seigniory by Eſtoppell, 17 E. 3.31. and 37. But ſee 46 E. 3. 12. the Lord put to his Petition for to diveſt a Seigniory to the King by Eſtoppel (*s*) by Conuſans in a Court of Record, *vi* 20 *Aſſ.* 17. *vi* 45 *E.*3,6 47 *E.*3.31. 50 E.3.23. *ac.*

If the Kings Tenant and another be diſſeiſed of lands holden of the King, and now the Heir of the Diſſeiſor is in by diſcent, the Diſſeiſee dieth, the other Lord ſeiſeth the Wardſhip of the land of the body, afterwards the Heir doth recover in a Writ of Entry.

Littleton ſaith, That now the King ſhall have the body, and alſo the land holden of the other. *Dygas*, that's a marvell, *&c* 15 *E.*4 10

If my Tenant enfeoffeth the King, and takes back an Eſtate, *&c.* yet he is my Tenant in right, and the King hath not but a Seigniory by way of Eſtoppell, as it was ſaid, 45 E.3.6.46 E:3. 12. *b.* 47 E.3.21 *ac.*

XXXII. *What advantage or Prerogative the Committee of the King ſhall have.*

NOte the Committee of the King of a Ward ſhall not have any other Wardſhip by reaſon of it. 35 *H* 6 *gards* 70, And there *Gnards* 14. by all the Juſtices. And alſo the King ſhall have Preſentments to Advowſons againſt ſuch Committee, unleſſe he gave expreſs words to have them. But it is holden 12 H 4.25. *Guards* 82. That the Committee of the King ſhall have a Ward by cauſe of Ward, although that the King doth remain Guardian, becauſe that when it comerh in lieu of Services, the Grantee ſhall have the ſame Prerogative as the King, ſo more is granted then the bare Ward, the Lord alſo ſhall have advantage againſt another Lord by

by Priority, as the King ſhould have had, *ibid.* But the Grantee of the King of the Seigniory ſhall not have the ſame advantage, *per Curiam, M.* 14 H.4.9. *Guards* 68.

The Committee of the King of the Heir female, ſhall not have the marriage if he do not tender her a marriage, untill after the fourteen years, becauſe he is not Guardian, ſo he ſhall not have advantage of the two years given by the Statute, 35 H.6. 52. *Guards* 71.

If the Grantee or Committee of the King be put out of the land, and the Heir, or of the land alone, he ſhall have *Amoveas manum* upon a ſuggeſtion in the Chancery, as the King himſelf ſhould have: For Ejectment doth not lye for the King, but the Writ ſhall be generall, and not to anſwer the profits, nor to make Fine, but only *amoveas manum, &c. Subpœna, &c.* 35 H.6. *Suggeſtion* 9. 1 H.7. 18. he had the Writ out of the Chancery. But 4 H.7.7. it is ſaid he ſhall have it out of the Exchequer.

But of things tranſitory, the Committee is put to his Action at the Common Law, as Ravishment, or *Quare Impedit*, becauſe the King himſelf ſhall have them, 4 H.7. 1.

If the King commit the whole land, where parcell is holden of another Lord, he ſhall not diſtrain upon the Committee for his Rent, no more then upon the King; 44 E 3. 13. But he who hath a Rent charge may diſtrain the Committee, by the opinion of 21 H.7. 2. *quære.*

An action upon the caſe for that he did enter into certain land committed to the Plaintiff by Nonage, *&c.* and levied certain ſumms of money in the contempt of the King, *&c.* and the Writ abated by a Ward, for he ought to have an Ejectment, or account of the Receipt, *&c. P.* 11 H. 4. 63. it is ſaid, that he ſhall not have the Action which the King could not have there. See 43 *E.* 3.6. Action upon the Statute 11. The King ſhall have the Wardſhip of the Heir of his Tenant by whom he granted the land to hold by Services due, for the beſt ſhall be taken for him, 44 E. 3. 45. *Guards* 7.

XXXIII. *Where the Heire of him who dieth in Ward, ſhall not be in Ward to the firſt Guardian, although it be the King.*

THe King hath a Seignory, which belongeth to the Prince in his hands, and by reaſon thereof hath the Ward. *&c.* and he makes Livery to the Prince, and afterwards the Heir being in the Ward of the King, dieth, his Heir within age, the Prince ſhall have the Ward of him, and not the King. So where the King hath a Ward by reaſon of another Ward, and to him makes Livery, now if the other dieth, his Heire within age, the King ſhall not have the Wardſhip of him, but he by reaſon of which, *&c.* 13 E.4. 10.

The

the King shall have the Wardship of the Heire of him who holds of his Ward by Posteriority, 12 H.4.25.

If the King grant the Wardship *de herede in heredem quamdiu, &c.* if he come to his age, and dieth before Livery, his Heir being within age, shall not be in Ward to the Grantee, but to the King 14 E.4.7.

Note by *Belknap*, That for Ward becauſe of Ward, the King shall not have but the lands holden of himſelf, *6 R.2. Guards* 105.

XXXIV. *What Tenure draws Wardſhip.*

NOte, where a man holdeth of the King to find him a Horſe price 5 *s. & unam ſaccam, & unam brotheam per xl. dies quando Dominus Rex iret in exercitu in Walliam*, this was adjudged Petite Serjeanty, and the King shall not have the Wardship by reaſon of ſuch Tenure, 9 H. 3. *Guards* 145.

Where a man holdeth of the King to find a man in his war by 40 daies, this is adjudged grand Serjeanty, becauſe it is to be done by the body of a man, and by his own body, and he cannot find another for him, 24 *E.*3. 3. *Guards* 47. *&c.*

Note, it was adjudged by the Court, that this is grand Serjeancy, if a man holdeth of the King to go with him *In exercitu verſus Scotiam in avergardia, & in redditu ſuo in retrogardia.* And ſo if he holdeth to give to the King Horn-geld, which is Cornage, and the King shall have the Ward for it, 23 H.2. *Guards* 148.

The Heire shall be in Ward for a Tenure by Caſtle-guard to be done in *England*, yet this is no Service out of the Realm, but it is as Eſcuage and of the ſame nature, *per Curiam*, 19 *R.*2. *Guards* 165.

XXXV. *Where, and in what County the Writ of Ward ſhall be brought.*

A Writ of right of Ward of land, and of the body shall be alwaies brought where the land is; but a Writ of right of the body was brought in a another County, and awarded good, 40 E.3.6. *Wards* 93.

XXXVI. *Where the Title of the King ſhewed to the Court after Verdict for the party ſhall ouſt him of his Judgment againſt the other party.*

IN a Writ of Ward it was found for the Plaintiff, and before Judgment it was alledged that it was found by Office, that the Anceſtor held five acres of one who is in Ward of the King, *&c.* yet the Plaintiff shall have Judgment, becauſe it is not alledged that the King, nor the Eſchea-

tor in his name hath not ſeiſed the Ward in Fait, but if he had ſeiſed him, the Juſtices ſhall ſurceaſe: But the King ſhall have a *Scire facias* againſt him, who recovereth alſo for the damages, whether the Infant be dead, or alien, *&c.* that is before Judgment, *&c. M.6 R:2. Guards* 105.

XXXVII. *Non-certainty of the Tenure adjudged for the advantage of him who departs with the Land.*

IF the King make a Feoffment *tenend. per ſervicia debita, &c.* this ſhall be intended Knights Service, and he ſhall have Wardſhip, 44 E: 3.45. *Guards* 7.

So where a common perſon before the Statute made a Feoffment, *Tenend. libere & quiete, & faciend. forinſec. ſervitium* ſuch a Feoffee held of the feoffor, not of the chief Lord, which he ſhould have done, if it had been *faciend. capitali domino forinſc. ſervicium, &c. An.* 12 H:3. *Guards* 152.

RELIEFE.

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1. *VVhere the Heire ſhall pay Relief, although he be in VVard, and within age at the death of his Anceſtor.*

NOte, the Heir being in the Wardſhip of the King, when he cometh to his age ſhall pay Relief to the other Lords. And *Hill* ſaith, that the Lords ſhall have the rents of the lands holden of them by petition during the Seiſin of the King, becauſe of the Wardſhip, *&c. M.* 19 *E*:3. *Relief* 1. 29 *Aſſ.*5. agrees, that upon petition they ſhall have Judgment againſt the Committee upon his default, and an Aſſiſe againſt him for the rent withdrawn after, agreeing to the whole in the firſt caſe, is the book of 24 *E*:3.24. *Relief* 7.

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11. *VVhere the Heir being in by Feoffment ſhall pay relief.*

IT is ſaid, that the Lord ſhall not have relief of the Heir of the Feoffee of his Father, although he ſhall have him in Ward, if he were within age.

Seton

Seton ſaith, That the Wardship is by Statute, which ſpeaks nothing of relief, ſo the ſame remains at the Common Law, and the Lord challenged nothing but that he had not notice of the Feoffment, nor the Son did not attorn to him: And *M.*17 *E.*3.63.*Relief.*3. See if he ſhall have relief by equity of the Statute, *vi.* 4 *E*:3.22. that he ſhall have relief.

Thorp ſaith, That if the Tenant enfeoffeth his Heir of full age, the Lord ſhall not have relief, becauſe out of the Statute, *P*: 31 *E*:3.*Colluſion* 29.

If my Tenant enfeoffeth his Son of full age, and dieth before the Son give me notice, I ſhall have relief, for the Father died my Tenant as to Avowry. *Fitz.* thinks it is not Law, for the other was by Tenant in Fact, 7 E 3.*Relief* 11.

III. *Where Relief ſhall be paid for the Deſcent of a Remainder, and when it ſhall be paid.*

I acknowledgeth a Fine to *B.* who renders the ſame to him for life, the remainder to his Son *T.* and *E*: his wife in tail, the remainder to the right Heirs of *I*: who dieth, and *T*: dieth, and E: dieth without iſſue, now the right Heir of *I*: ſhall pay a relief unto the Lord, as Heir of *T.* the Son, becauſe if *I.* had ſurvived *T.* and his wife, he had been ſeiſed in fee, and a Writ of Right would lye againſt him, ſo the fee was in him, and from him deſcended to *T*: *&c.*40 E:3.9.*Relief* 2.

Land is given to *I.S.* for life, the remainder to his right Heirs, he ſhall pay a relief, becauſe he is in by deſcent, 32 E: 3. *Relief*:4.

IV. *When Relief ſhall be paid after the death of the Anceſtor who had not poſſeſſion in* fait, *but onely a poſſeſſion in Law.*

THe Heir of the Lord avowed upon the Tenant, for the relief of his Grandfather, after the death of his great Grandfather, and of his Father after the death of his Grandfather, and layed the Seiſin of the Seignory in his Grandfather, and the Seiſin of the Tenant in the great Grandfather of the Tenant, and alledged the diſcent from each to the other, *M*:13 *E*:3.*Relief* 6.

V. *Where Relief ſhall not be paid for a Tenure in Fee-farme.*

Inchden ſaith, That every Fee-farm is intended the very value of the land, and therefore he ſhall not pay relief: But the Seigniory was of ſuch a Feoffment made before the Statute of *Quia emptores terrarum*, or after, *Quære* 45 *E.*3.15. *Ceſſavit* 15.

VI. *Where Relief ſhall not be paid, becauſe the Lord hath received Homage, or Fealty.*

NOte, the opinion is, That after the receipt of Homage, a man ſhall not avow for relief, *P.*15:*E*:3.*Relief* 5, and therewith agrees *P*: 16. *E*:3.*Relief* 10.

VII. *Relief of the Heire of the Feoffee of Tenant in tail, or of the Iſſue in tail after a Diſcontinuance.*

NOte, the Donor in tail may take the Diſcontinuee for his Tenant, and avow upon him for Services, and upon his Heir for Relief, as *Belknap* ſaid that he did: And *Perſey* ſaid, that for relief the Donor for neceſſity ſhall avow upon the Heire of the Diſcontinuee, becauſe this is a thing in poſſeſſion to be paid, H: 48 E:3.8. *Avowry* 83.

VIII. *Where Relief ſhall be paid, although that the Tenure be by Fealty and Rent for all Services and Demands.*

IF a man maketh a Feoffment to hold of him by Fealty and Rent for all Services and Demands, he ſhall have relief, for the ſame is no ſervice of it ſelf, but an approvement which iſſueth of the ſervices, 30 *E*: 1. *Relief* 13.

Vi: *C*: 4. *part* 49. the Executors of the land ſhall have debt for relief, becauſe it is but an Improvement: But the Lord himſelf ſhall diſtraine, and ſhall not have debt, 7 H:6.13. 20 H:7:1:*vi*: 10 H:7:10: that it is not properly a debt:

Hank ſaith, That when a man makes a Feoffment *tenendum, &c. pro omnibus ſerviciis & demandis*, thoſe words do not exclude any thing incident to the Services before, as if it were Knights-ſervice reſerved of the Premiſſes, he ſhall have Ward, Marriage, and Relief, and Relief if it was

to

to hold by a penny *pro omnibus, &c.* by *Skrene.* Alſo Heriot, Cuſtome, which runs throughout all that Country, or Honour, is not gone by thoſe words *pro omnibus, &c.* Otherwiſe is it of a particular Cuſtome, Suit to his Court, and ſuch not expreſly reſerved by the Premiſſes, 14 *H*: 4. 3. *Avowry* 60.

A man gave Lands to husband and wife in tail by Deed, which was, *Pro homagio & ſervitio ſuo habendo, & tenendum vt ſupradict. eſt, reddendo annuatim 2. markes pro omnibus ſervitiis, exactionib. ſecular. & cunctis demandis, ſalvata ſecta curiæ.* And adjudged by the Court that the Donor ſhould not have Homage nor Relief upon ſuch Deed, nor no ſervice but the Rent, *&c. Fitz.* conceives the Law to be contrary, &c *M*: 13 *H*: 2. *Avowry* 89.

A Feoffment before the Statute by Deed, which was, *Tenendum pro* 10 *s.* rent, *Pro omnib. ſecular. ſervitiis, exaction. conſuetudinibus, & demandis.* And upon a Demurrer in Avowry for Relief, the Lord had return by Award of the Court: for the Court ſaid, that it was common Law, That the Heire of him who held in Socage ſhould double the rent, and this advantage was incident to the Seigniory: As alſo Relief is incident to Eſcuage, 18 *E*. 3. 26. *Avowry* 99.

IX. Where an Abbot or Prior ſhall pay Reliefe, where not.

AVowry upon an Abbot for Relief after the death of *C.* his Predeceſſor, and alledged the Tenure to be by Homage, Rent, and to pay 40 *s.* for Relief after every death, and layed ſeiſin therof by Preſcription and ſpeciall ſeiſin by the hands of *T.* Abbot. the Plaintiff took the Tenure by proteſtation, and they were at iſſue upon the ſeiſin, *P*: 8 *R*: 2. *Reliefe* 14.

An Abbot who is in by ſucceſſion, ſhall never pay a Relief, by *Wilby*, becauſe he is in by election, *H*: 20 *E*: 3. *Relief* 8. *vi*: *P*: 3 *E*: 3. 13. *Reliefe* 9. *et verum eſt quia domus non moritur.*

Without a ſpecialty granting, if a man ſhall never avow upon a man of Religion for relief, by *Wilby*, 20 E: 3 *Avowry* 124.

But 17 E: 3. 5. *Colluſion* 22. An Abbot ſhall avow upon a Prior for relief, alledge Tenure and ſeiſin without Deed.

X. Where a man ſhal pay two Reliefes to one Lord for the ſame Land.

THe Father Tenant dieth ſeiſed, the eldeſt ſon dieth before entry or poſſeſſion in fact, the younger brother being of full age ſhall pay two Reliefs, the one for the death of his Father, the other upon the death of

of his Brother, for he was alſo Tenant to the Lord, *tem.E:* 1. *Reliefe* 22.

XI. *Reliefe where no Diſcent, and of a Purchaſor.*

AT the Common Law, there was no Relief but by reaſon of a Diſcent to the Heire being of full age; but by Cuſtome every Purchaſor ſhall pay Relief (*s*) ſhall pay the double of the rent, and ſuch Cuſtome is in *Cornwall*: And if the Lord purchaſe the land, and alieneth the ſame again, the Cuſtome is revived, where it runneth through the whole Country, and a man ſhall have relief by that Cuſtome of his Alienee, as he ſhall have Heriot of his Feoffee, where there is ſuch Cuſtome; as *Schard* adjudged it in the caſe of Heriot, *t*4 *H:*4.3. *Avowry* 60.

Licenſe of Alienation.

I. Where Licenſe ſhall be requiſite for the Kings Tenant of Alienation, or for alteration of the Tenancy, and what Licenſe ſhall be good to do it.

NOte, in Aſſiſe, the Tenant ſhewed divers Alienations, and becauſe the land was holden of the King, he ſhewed a Licenſe for every one, and ſhewed them in pleading: And that how one joynt Feoffee hath releaſed to his Companion, and alledged alſo a Licenſe of Alienation of that, &c. *P:*8 H:4.8. *Licenſe.*1:

If the King licenſe his Tenant to alien, and afterwards it appeareth upon Record that that Tenant hath but tail, it is a void Licenſe, and the land ſhall be re-ſeiſed notwithſtanding Livery made to the Heir as a Purchaſor, by force of ſuch Licenſe, for the King was deceived, and ſhall not loſe ſo his advantage, &c. 21 E:3. *Licenſe* 32. and therewith agrees 40 *E:* 3. *lib. Aſſ: Pl:*36. *C.*1. *part*, in the caſe of *Alton Woods, acc*

The King licenſeth his Tenant to levy a Fine of the Mannor of *M.* with Warranty, &c. unto the Earl of *Warwick*, rendring to the Tenant 100*s. per annum*: Now he could not levy a Fine of the Mannor, excepting, &c. rendring, &c. for by the Licenſe the whole Mannor ſhall be charged with the

the Rent, and the Fine ſhall not be received but according to the Licenſe in the whole, 30 E:3.17. *Fines* 53. yet he need not levy a Fine, if he will, as it appeareth, 43 E:3.34. but if he do alien it muſt be according to his Licenſe.

The Earle of *Cornwall* ſeiſed of a Mannor in tail, the Reverſion to the King, exchanged with one *C.* in fee, and died without iſſue, King E.1. being his Heire, and having other Aſſets of Fee-ſimple lands deſcended to him, as it appeared by Record by ſearch, and the Alienation and the Title of the King found by Office; yet upon the Exchange and Aſſets pleaded by the Heire, the Exchange was awarded, and that he ſhould retain the land againſt the King, 45 *Aſſ:6. Warranty* 68.

The Kinſt granted Licenſe to an Abbot that he might hold in *Mortmain* Lands and Tenements to the value of five pounds *per annum*, and he purchaſed the Advowſon of a Church, at the next avoidance the King brought a *Quare Impedit*, and ſhall be barred if within the value, and if it be not holden of the King himſelf. for then ſuch a generall Licenſe ſhall not ſerve to both intents. But it was ſaid, that the Advowſon was well comprehended in the Words, Lands, and Tenements, *M:*33 E:3. *Grants* 102.

The King gave Licenſe to *W.* to alien a Mannor and an Advowſon, whereof the King himſelf was ſeiſed, for Alienation without licenſe, &c. And at the next Avoidance the King brought a *Quare Impedit*, and recovered, for it was ſaid, that his lawfull ſeiſin was not avoided by that Licenſe, &c. 33 E:3. *Grants* 103.

Parn. ſaith, That at the Common Law before the Statute, land holden of the King in chief, was not forfeited for an Alienation without licence, and ſaith, that that was adjudged of the lands of one *Gower*. And *Wilby* ſaid, yet if lands holden of the King by grand Serjeanty are aliened without licence, they are forfeited to the King for ever, *P:* 14 E.3. *Quare Impedit* 54.

But ſee, 9 E:3.26. That lands holden of the King in chief were not forfeited at the Common Law by Alienation without licence, and that *Hank* ſaid expreſly, and that in the time of *H:*3. the Kings Tenant alſo might have Aliened his Freehold, as another Tenant might, 14 H:4. 3. *Avowry* 60.

The Executors of the Tenant of the King did alien by force of a Deviſe of their Teſtator, and there no Licence is alledged, 49 E:3. 16. *Deviſe* 8.

Note, there needeth no licenſe of Alienation of Land which is not holden of the King immediate, but by a mean, &c. 4 E:3. 1. *Quare Impedit* 33.

II. *Where*

II. *Where Licenſe ſhall be requiſite to charge Land holden of the King.*

NOte, it was adjudged that the Kings Tenant may well charge the land holden of the King without licenſe had, *&c.* 40 *Aſſ:* 5. 9 *H.* 6. *acc.*

But ſee 30 *E:*3.17. upon licence to levy a Fine rendring rent, he was not ſuffered to charge the land, but according to the words of the licenſe before.

III. *What Intereſt the King hath by Seiſin for Alienation without licence.*

STone ſaith, when any land is ſeiſed into the Kings hands for an Alienation without licence, but that the King is not Tenant of the Freehold, but hath it only in the name of a Diſtreſs, *&c* 4 *E:*3. 1. *Quare Impedit* 33.

Livery, Seiſure of the King, Traverſe to an Office and Petition.

I. *Where a man ſhall enter and avoid the poſſeſſion of the King without Livery, or* Ouſter le main *ſued, or other the like proceſſe, where not.*

WHere the King taketh the profits of a man outlawed in a perſonall Action, and he ſueth forth a pardon, he may enter into his lands without ſuing of Livery, by *Babington*, 9 *H:*6.29. *Livery* 13.

Note, by the Juſtices for Law, If I let lands to the Kings Tenant for life, after his death my entry is lawfull, and the land ſhall not be ſeiſed into the Kings hands: For the words of the *Diem clauſit extremum*, are, *de qui-*

quibus, &c. obiit ſeiſitus in dominico ſuo ut de feodo, &c. H:14 H:4:32 Livery 24.

He who recovered lands againſt the Kings Tenant, gave the ſame to his two Sons in tail, the remainder to the ſame Tenant: Now although the Tenant dieth ſeiſed and this dying ſeiſed is generally found by Office, the Sons ſhall have *Ouſter le main ſimul cum exitibus*, ſhewing their right: As if I do enfeoff the Kings Tenant upon Condition, and that is broken, *&c.* Alſo *Brian* and *Townſend* ſaid, that the Son might enter before Office found. *Huſſey* denieth that, becauſe the King is intituled by the Office found, *&c.* 3 H:7.2. *Traverſe* 12.

The King ſeiſed of lands of a man attainted for the Peace, Day, and Waſte, the land being holden of another Lord, this is found, and the Lord after the year doth enter without any proceſs of Law, by which the land is reſeiſed, he ſhall be charged with the profits for his time, and put to ſue for the lands in form of Law, 8 E:2 *Traverſe* 48.

II. *Where, and for what Lands and Tenements, Livery ſhall be ſued, and how.*

NOte by all the Juſtices, that no man is bound to ſue Livery out of the Kings hand of lands holden of him by reaſon of his Dutchy of *Lancaſter*, nor of no other land not holden of the King in chief, or of lands come unto him by reaſon of ſuch lands, although they are in his Ward by reaſon of another Ward: But the Honours which are in his hands not rejoyned to the Crown, are in the ſame condition as they were in the hands of the Duke 28 H:6.11. *Livery* 14.

He that hath not an Office found for him, ſhall never have Livery, although he be found right Heir in an Aſſiſe, againſt the other Heir who is a Baſtard, for that Record is void when the King is ſeiſed by Office, by which a pardon of the King to him of all entry, is alſo void by *Martin, vi.* 2 H.6 5. *Livery* 35.

Huſſey ſaith, If one be found Heire by an Office, and afterwards another by another Office, the King ſhall make Livery to the firſt, becauſe he was firſt intituled by him, and the other ſhall have his remedy againſt him, 1 H:7.27.

He who ſueth Livery firſt ſhall prove his age by men of two and forty years, and it ſhall be by ſignes and tokens: And it ſeems there need not be twelve of the Jury, becauſe it it by proofs, *Ass:21 R.2. Livery* 5. And he ſhall have a Writ to the Chamberlain to receive his Homage, and then to the Eſcheator to make Livery, 12 *H.4. Livery* 4.

III. *VVhere Livery ſhall be ſued by the heir in Socage, or by his friends, and where he ſhall not have it* cum exitibus, *nor before his age.*

NOte, it was ſaid, if the heir female who holdeth of the King in Socage, ſueth Liverie before her age of 14 years, ſhe ſhall have it *ſimul cum exitibus*, but if ſhe doth not ſue it till after the age of 14 years, ſhe ſhall have but a generall Liverie, and not *cum exitibus*, 35 *H.*6.52.

The King upon an Office found for him ſeiſeth the Land of him, who in truth holdeth of him in Socage, and at the prayer of his friends, becauſe he held no Land of the King in knights ſervice, he ſhall have liverie with the iſſues, *ſi conſtare poterit* upon a writ to the Barons of the Exchequer, to ſearch whether he holdeth not other land of him in knights ſervice &c. becauſe then the King hath no right to ſeiſe &c. 45 *E.*3. 19. *Liverie* 27.

Parn ſaith, that he which holdeth no land of the King in knights ſervice, he ſhall not ſue to have Liverie, but to have *Ouſter le main*, 16 *E.*3. *Liverie* 29.

Note if a man holdeth of the King in chief in Socage, the King ſeiſeth the heir, he ought to ſue Liverie, and not *Ouſter le main*, becauſe the ſeiſure was lawfull, otherwiſe it is if he holdeth of another in knights-ſervice, for then he holdeth not of the King *in Capite &c. T.* 33 *E.*3. *Liverie* 1.

Note, if a man boldeth of the King in knights-ſervice, and of other Lords in Socage, and dieth, his heir female within the age of 14 years, now he ſhall not have Liverie of the Lands holden in Socage, at the age of 14 years, for he ought to ſue one in her liverie, by all the Juſtices, 35 *H.*6. *Liverie* 19.

IV. *Where the Heir ſhall have Liverie* cum exitibus, *of Lands in Knights-Service.*

NOte, after that the heir is of full age, and hath proved his age, the King of Right ſhall make him Liverie, and if the King deny it him &c. he ſhall have Liverie *cum exitibus*, after deniall upon requeſt in Chancery &c. and a traverſe tendred by another ſhall not ſtay the Liverie when it ought to be made, but of the iſſues mean after his age, and requeſt to have Liverie, he ſhall have nothing, 1 H:7:27:Liverie 18.

C. Lit. 77: The Heir in Ward by reaſon of a Tenure *in Capite* at full age ſhall ſue his liverie: But ſee *C.* 8 *part in Hulls Caſe*, when he tendreth liverie, and hath day for proſecution of it, and dieth, the intereſt of the King is determined, but if the heir of full age dieth without tender,

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the livery is gone, but the King ſhall have the mean profits.

The King gave Lands to the Queen for life, the remainder to the lord *Ferres* in Tail, and after the death of the Queen, the King ſeiſed by office, which found, *W.* heir of the ſaid *Lord*, who died before liverie, and his iſſue alſo died before liverie, his iſſue within age, the King aliened the land, & in a *Mandamus* all this matter was found, and the Heir now prayed liverie, had a *Scire facias* againſt the Patentees, who did demurre, becauſe none of his anceſtors proved their age, nor demanded liverie, and it was adjudged that the plaintiff ſhould have liverie, but no mean profits, becauſe the ſeiſure of the King was lawfull, and *Gaſcoigne* ſaid, that the heir here might have ſued liverie, and have put out the Patentees without a *Scire facias*, and the continuance of the Seiſin of the King, nor the diſcent in the King ſhall not hurt the heir, when the firſt Seiſure was for Wardſhip *&c.* 2 H. 7. 17. *Liverie* 23.

V. *VVhere Liverie ſhall be ſued out of the Kings hands for Lands not holden of the King, as of his Crown.*

NOte, if he who holdeth of one who is in Ward of the King dieth, his heir within age, he ſhall be alſo in Ward of the King, and ſhall ſue liverie, although he doth not hold of the King, 28 *H.* 6 11.

Thorp ſaith, If the King ſeiſeth a Ward, who holdeth of another *Lord*, the heir cannot enter at his age without ſuing to the King, which was granted by the Court, 26 *Aſſ.* 57. *Liverie* 33. and See there, liverie ſued of lands holden of an Honor forfeited to the King, where another was Tenant for life of that land, before the forfeiture and after.

VI. *Where a man ſhall have his Land by* Ouſter le main *without Liverie, and where* una cum exitibus, *where not.*

HE whoſe lands are ſeiſed, where he holdeth of the King in Socage, and no land in Knights-ſervice, ſhall have an *Ouſter le main cum exitibus*, 45 *E.* 3. 19.

Note, when the King is ſeiſed of the Lands of an Idiot, this is but in the Right of another, and a generall ſuing out of his hands, after the death of the Idiot, is ſufficient without proceſſe of Law, as by proof of his age &c. and Advowſons ſhall paſſe to the next heir without mention of them, *T.* 16 *E.* 3. *Liverie* 30.

Note by office, a woman was found joint-tenant with her husband the Kings Tenant, by which ſhe had Liverie without finding ſureties of marriage, 15 *E.* 3. *Liverie* 31. accordingly adjudged, 44 *Aſſ.* 35. and that

ſhe ſhall have Liverie *una cum exitibus*, and the King ſhall have no primer ſeiſin, *Liverie* 11. 5 *E.*4.8. *Cook acc.*

The King was ſeiſed of Lands holden of him after the death of *J.* afterwards it was found by Office, that *J.* had but for life, the Reverſion to *H.* by which a Writ was ſent to the Sheriff to remove the Kings hands, by which *H.* entred upon the Committe of the King, but before a Writ of diſcharge he could not enter, notwithſtanding an *Ouſter le main* in the Chancery, becauſe the Committee ſhall be charged with the mean profits, but there becauſe it appeareth that the King hath not right to ſeiſe, the poſſeſſion ſhall be delivered to no body, but a generall *Ouſter le main* ſhall be, and that for the advantage of him who hath right, and his Freehold is affirmed by the poſſeſſion of the King, by *Schard*, 10 *E.*4 2. *Aſſiſe* 156.

Husband and wife Joint-tenants in fee, the Husband found guilty of the death of a man, was committed to the Ordinary as a Clerk attaint, afterwards he eſcaped out of the priſon of the Biſhop, for which the Land was ſeiſed into the hand of the King: and after the year and day, one *J.* ſued the Land out of the Kings hands by proceſſe of Law as chief Lord of whom &c. and the wife brought an Aſſiſe againſt him, and upon that matter found by record without any other ſeiſin after ſeiſure of the King, yet ſhe could not enter upon the King, but ought to ſue for the Land by Proceſſe of Law, 5 *E.*3.47. *Aſſiſe* 166.

The King ſeiſed after the death of his Tenant, and it was found by office that he had but for life, the remainder to *M.* in Tail, by which he removed his hand, yet he ſhall have the preſentment againſt *M.* which happened before the Ouſter, becauſe it was ſaid, that he had right to ſeiſe and retein, untill *M.* ſued for the Lands out of his hands, and doth him homage as he ſhall do after the death of a Tenant by the courteſie, 18 *E.* 3.21. *Quare impedit* 150. Yet *Schard* ſaid, when he hath no right to ſeiſe, but for ſervicces &c. he ſhall make reſtitution *cum exitibus.*

But ſee 24 *E.*3.7. *Quare impedit* 20. That Preſentment is not compriſed in the word Iſſues, for the Court ſaid, that theſe are onely Rents and profits triable by the Eſcheutor, and for which he ſhall accompt, alſo monies in the King Coffers ſhall not be delivered by reſtitution of Iſſues, without eſpeciall mention made thereof by *Wilby*, 24 *E.* 3. *Quare impedit* 10. 24 *E.*3. 27. *Quare impedit* 20. 27 *E.* 3. 81. *acc.* 6 *E.*2. *Preſentment* 9.

It was found by Office, that the Tenant of the King in London died without heir, by which the King gave the Lands to *P.* for life, and a writ was to the Mayor, for to deliver him Seiſin, who returned that the ſame Tenant deviſed the Land to his wife for life, ſo that ſhe or his executors ſhould ſell the Reverſion for his ſoul &c. and that this is enrolled &c. ſo as he could not make Livery. *P* entred, and the wife had a *Scire facias* againſt him to have reſtitution, and upon the matter debated, the writ was abated, becauſe he ſhall not have reſtitution without an Office found

for

for him; yet it was ſaid for the wife, that the retura of the Mayor which ſtood with the firſt Office, and found her Title by Deviſe, and her Seiſin of the Freehold, ſo as ſhe could not have a Petition, ſhould ſerve her for an Office; alſo the firſt ſuggeſtion of *P.* to the King was, that the Tenant was a Baſtard, and died without iſſue, and the ſhewing of the wife was in no part contrary, ſo no traverſe &c. and it was ſaid, that ſhe might well have an aſſiſe againſt *P.* becauſe the King was never ſeiſed &c. *vide* 29 *Aſſ.* 13. *Traverſe* 29.

It was found by Office, that *A.* held of the King, and aliened to *J.* without licence, who gave the Land to *M.* in Tail, the Remainder to *R.* in Fee, and *M.* died without iſſue, and *R.* died, his heir within age, and *T.* found occupier, for which he was put out, and upon his Petition endorſed he did traverſe that *J.* was never ſeiſed, and that the Land was not holden of the King, but of another, and by inquiſition found accordingly, and that it was holden of *W. &c.* who held over of the King, *&c.* and that *T.* was ſeiſed by force of a Statute Merchant, acknowledged by Tenant in Tail, who is dead without iſſue &c. and although that by this it appeareth, that *T.* had no right to hold the Land, yet that was againſt another, and nothing to the King, but againſt him the poſſeſſion which he had was ſufficient to have reſtitution, and ſo was the opinion, 37 *Aſſ. Traverſe* 35.

The King granted the Ward of the Heir of his Tenant, After Office found came *A.* and ſhewed how the Tenant had but jointly with him, and had a *Scire facias* againſt the Patentee who did maintain the office, and it was found for *A.* for which cauſe he had Liverie *cum exitibus*, 10 *H.* 4. 2. *Traverſe* 50.

It was found that *T.* held the Mannor of *M.* of one *J.* by knights-ſervice, and that he held the Mannor of *D.* of the king by rent, and yearly eſcuage of 10 s. the king ſeiſed the land, and let it to farm to *J.* untill it were decided, if by ſuch Eſcuage it ſhould be ſaid knights-ſervice, and hanging that, a Church appendant to the Mannor of *M.* became void, and the king thereof brought a *Quare impedit* againſt *J.* for notwithſtanding the Leaſe, the king ſhall have the preſentment, but the matter depending, it was decided that the Right did belong to *J.* and he had liverie *cum exitibus*, and upon alledging that had alſo a Writ to the Biſhop, for the preſentment is the profit of the Advowſon, 5 *E.* 3. 6. *Quare impedit* 34.

It was found by office, *virtute officii*, that *A.* gave land to *R. Percy* in Tail, rendring rent, and re-entry for non-payment, and after a diſcent or two caſt, the heir of the Donor did enter upon the iſſue in Tail for non payment, and was ſeiſed untill diſſeiſſed by the Earl of *Northumberland*, one of the iſſues in Tail, who was attainted by Parliament, and his lands given to the king, *ſalvo jure, poſſeſſion. & legitimo ingreſſu cujuſcunque*, and that there the Earl died at *Palmſon* field, and the Tenant made continuall claim &c. and the opinion was, that the party might have entred upon

upon the king by the Statute, or have had an *Ouſter le main*, and that the Eſcheator ſhould enquire of the truth of the matter, for the party *virtute officii*, as well as he might by Writ, *M.3.E.4 24. Office 1.*

It was found by Office, that *A.* had infeoffed the king to the uſe of another, for which the king ſeiſed the Land, and granted it over, and becauſe the king could not be ſeiſed nor enfeoffed to the uſe of another, and that Feoffment was not by deed enrolled, nor by no manner of Record, ſo as nothing paſſed to the king a ſpeciall writ reciting the whole matter, was awarded to the Patentee, to remove his hands from off the Lands, and to deliver the profits &c. to the party, *5 E.4.7, Office 2. Markham* alledged there, that where the king had ſeiſed lands which were holden of him in Burgage, a *Superſedeas* was awarded to the Eſcheator: alſo he ſaid, that if the Termor of the king dieth ſeiſed of land of which he was enfeoffed unto the uſe of *A.* and his heirs, That if the king ſeiſeth the lands, that *A.* or his heirs ſhould have an *Ouſter le main, una cum exitibus.* So the Survivor of Joint-tenants, by *Choke*, *5 E.4. Office. 2.*

VII. *Where a man ſhall have an* ouſter le main *by ſhewing of his Right without livery, where* cum exitibus *&c.*

THe Fees, poſſeſſions and Advowſons of the Prior of *G.* were ſeiſed, becauſe he was an alien &c. who came and ſhewed, that at another time his Lands were ſeiſed for the ſame cauſe, when he was Prior of *A.* and he had reſtitution, becauſe he was born in *Gaſcoigne* &c. and now upon this matter a writ was awarded unto the Eſcheator to remove his hands, rehearſing how of his ſpeciall grace, he had made reſtitution without ſpeaking of the Advowſons, yet they did paſſe alſo, becauſe the king had no Right, and thus the rehearſall of his grace, ſhould not hurt the party &c. *27 Aſſ 48. Liverie 9.*

The Arch-Biſhop of *C.* ſued for a Ward ſeiſed by the king, and now Office found in the County of *E.* that the anceſtor had but an aſſent of the king, and that he held the Mannor of *A.* of the Arch-Biſhop in knights-ſervice; yet upon that office he ſhall not have reſtitution, becauſe there was another Writ ſent to the Eſcheator of *N.* not returned, and there it might be found for the king, alſo it is not enough that he is Arch-Biſhop, ſo the king ſhould not have Prerogative of lands holden of him, becauſe exempt by the Statute of Prerogative; for it might be that the Arch-Biſhop purchaſed that ſeignorie of later time, alſo the king may yet be intitled to the body, and Liverie ſhall not be by parcells, but afterwards, becauſe that divers of his Predeceſſors had had reſtitution in the ſame Caſe, and the king ſo willed now, he had reſtitution *cum exitibus &c. 16 E.3. Liverie 29.* it ſeems not of Right.

P.

P. leaſeth for life, and granteth the Reverſion to T. the Tenant doth not attorn, T. re-granteth the land to *P* and his ſecond wife in taile, *&c.* the Tenant doth not attorn, the Tenant for life dyeth, *P* dyeth, the *King* ſeiſeth S the heir of *P.* by his firſt wife and the land, the wife hath Dower in Chancery, & after the death of the Joyntenant with her husband, hath the whole delivered, and dyeth, his iſſue enters, *P* brings Aſſiſe, and upon this matter found, he did well recover without prayer, that the Land be reſeiſed to the *King*, *Quare* if office had been found for the wife, 21 *E* 3 1 *Entrie congeable* 40.

The Earle of *Ormond* ſhewed in the Exchequer, how that the Earl of *Wiltſhire*, whoſe heir *&c.* was ſeiſed of the Mannors *&c.* and forfeited them by attainder in the time of *Edward* the fourth, and he ſeiſed thereof in the right of his Crown, and afterwards *Richard* the third was ſeiſed in the right of his Crown, and afterwards he was attainted by the name of *Duke* of *Gloceſter*, and the Act of Attainder in the time of *Edward* the fourth was repealed by Parliament, and the heirs of the Earl of *Wiltſhire* might enter and enjoy their inheritance, as if the ſaid act of Attainder, had never been made: And ſhewed that it was found by commiſſion upon the Attainder of the Duke of *Gloceſter*, that hee was ſeiſed of the Mannors, and they were ſeiſed into the hands of the King, and alledged in fact that they were the ſame Mannors *&c.* and that the Duke of *Gloceſter* was the ſame perſon who was king, and prayed an *Ouſter le main*, and it was agreed that he ſhould have it; for a Petition nor traverſe doth not lye in the caſe, *M* 4 *H* 7 7 *Petition* 12.

A *Quare impedit* for the King againſt *T.* upon an office found of an alienation of a Mannor, to which *&c.* being holden of the King without licenſe, *T:* ſhewed, how that the Advowſon was holden of him, and upon that came the Treaſurer, & ſhewed all that the Eſcheator had done, and ſeiſed for the malice of *T.* and that upon ſearch he hath found the Mannor to be holden of the King, but that by two meſnes, wherefore he had not removed his hands: And the opinion of *Stone* was, that *T:* ſhould have a Writ unto the Biſhop upon this matter, and afterwards iſſue was taken, if the advowſon were holden of the King as appendant, or of *T.* as in groſs, 4 *E* 3 1 *Quare impedit* 33.

It was found by Office, that the Duke of *E* was ſeiſed of diverſe houſes, lands, and tenements in *C. D.* and *V. &c.* and the King ſeiſed *&c.* and granted them to the Dutcheſſe of *E.* and thereupon came *W. Parrey*, and *A.* his wife, and ſhewed how that at another time it was found by office, that the ſaid Duke of *E* dyed ſeiſed of the Mannor of *Grey* in *C* which deſcended to the King, *&c.* and that afterwards the Earl of *N* ſued unto the King by Petition, for that he was ſeiſed untill by the ſayd Duke diſſeiſed, and had Reſtitution, and gave the Mannor to *A* and *B* who gave the ſame to *W. Colt*, and he to the Plaintiff in taile, *&c.* and ſay that this Land, Houſe, and Tenements are parcell of the Mannor whereof the firſt office was found, and of which the Earl of *N.* had reſtitution

tution, and it was holden that *Parrey* ought not to have been put out by the ſecond office, but that a *Scire facias* ought to have iſſued forth againſt him by the Statute of *Lincoln*. And it ſeems to *Yelverton*, That upon this ſhewing he ſhall have livery upon the matter aforeſaid, and that by the Common Law, and ſhall not be put to traverſe, *&c.* 9 *Ed.* 4. 51 *traverſe* 7.

It was found that *W* dyed ſeiſed of a Mannor holden of the King in cheif in fee; and of another holden of the Arch-Biſhop of *Canterbury*, in generall taile, and that *Alice* the daughter of T is his heir, whereupon came *R* and ſhewed that that Mannor holden of the Arch-Biſhop was given to the Anceſtor, and the heir males of his body, and that *Alice* is the daughter of T. ſon of the Anceſtor, and that this *R.* is his younger ſon, ſo heir by the taile, and holden he ſhall be admitted to traverſe the office, becauſe he doth not claim by the ſame title, as *Alice*, and he is to have an *Ouſter le main*, and not livery, *&c.* 12 *E* 4 18 *Tenures* 8.

It was found by Office, That the Lord *Greſtock* Tenant of the King, dyed ſeiſed of the Mannor of *D.* &c. *I G* his younger ſon came and ſhewed, how that the Dean of *G* and others did recover this Mannor, againſt the ſaid Lord, and gave the ſame to the ſaid *I G* in tail, the remainder to the ſaid Lord according to his will, by which he was ſeiſed untill put out by office, without that, that the ſaid Lord dyed ſeiſed, and prayed the land to farme. *Huſſey*, That he ſhall not have it, becauſe that by his plea it ſhall be intended that the Dean &c. gave without licenſe ſo intruſion, and the King ſhall have the profits, and the Plea was holden naught, becauſe he had ſhewed his right, and alſo tendred a Traverſe together, which are of diverſe natures, for by the *Monſtrans de droit*, he ought to have alledged the ſame ſimple, and to have confeſſed the dying ſeiſed, and it ſeems, if he had ſhewed his right and relyed upon it, he ſhould have *Ouſter le main, cum exitibus*, by his title upon record, without any more, as he who enfeoffeth the Tenant of the King upon condition, and he breaks it, the feoffor ſhall have the Lands out of the Kings hands, by ſhewing of his right; &c 3 *H* 7 2 *traverſe* 12.

A *Scire facias* againſt the Patentee of the King of lands of his Tenant in ward for the feoffees of the Tenant to repeal the Patent by the feoffment to them made, without that, that he dyed ſeiſed; now the traverſe upon this ſhewing, nor the Livery ſhall not be ſtayed, depending the ſame by an Office found for the King, but the King may well make himſelf a Title in barr by the matter found, as the Colluſion of the Feoffment &c. 11 *H* 4 80. *traverſe* 16.

VIII. *Where*

VIII. *Where Livery ſhall be ſued by parcells, and where it ſhall be good by parcells, where not, and of what things.*

NOte, if three Coparceners be in ward of the King, and two of them coming to full age, they upon Petition in the Chancery ſhall have Livery of their parts of the lands, and all things which are ſeverable, but not of advowſons, &c. becauſe they cannot be ſevered, and therefore the King ſhall have all them, 38 *H* 6 9 *Livery* 16.

Where the heir ſueth livery of parcell of the land ſeiſed into the Kings hands, the ſame is void, and all ſhall reſeiſe, and the King ſhall be anſwered the profits, and the party pleaded a pardon by Parliament, 2 *H* 4 17 *Livery* 23. and of the reſeiſure, and the profits anſwered to the King agreeth 44 *Edw.* 3. 25. *Livery* 26. where all was reſeiſed &c. by mention not made of the advowſon in the Livery, yet that advowſon was never ſeiſed into the Kings hands, 44 *Ed* 3. 12 *Livery* 15. where he ſued Livery in one County, and all reſeiſed.

It was found by Office, that the Kings Tenant dyed, his heir female being within age, married to a man of full age, and that a ſtranger had abated into parcell of the Lands, the reſidue ſeiſed into the hands of the King, the husband and wife ſued Livery of that, not making mention of the Land of which the abatement was, and the opinion was, that all ſhould be reſeiſed, for all the Judges ſay, if the heir of the Kings Tenant at his full age, doth recover in a *Mortdanceſter*, againſt the abator, yet the Land ſhall be ſeiſed, and he ſue Livery, but the abator ſhall anſwer the King for the profits, 12 *R.* 2. *Livery* 28.

The Arch-Biſhop of *Canterbury* had Livery of a Mannor, as Lord which was ſeiſed into the hands of the King, being found not holden of the King, notwithſtanding that another Office was to be found in another County after the death of the ſame Tenant, and the Writ not yet returned; but that ſeemed to be *Ex gratia Regis*, *vi.* 16 *&* 3 *Livery* 29. For *Parn:* ſaith there, That livery ſhall not be made by parcells, as not of the land of the Lord, if not alſo of the body; and that cannot be untill as the Enqueſts are returned, becauſe one may ſerve for the King: And ſaid, That in the caſe of Dower or partition, nothing ſhould be done untill all the Enqueſts returned.

If the youngeſt ſon be found Heir in one County, and the eldeſt in another County, none of them ſhall have Livery, but he which is the very heir, ought by Commiſſion, or other Writ, finde himſelf heir in each County, otherwiſe hee ſhall not have livery, for no livery without an Office, and that ſhall be for the whole land, *&c. Hill.* 1 *H:* 7. 14 *Livery* 17.

Huſſey ſaith, That Livery ſhall be made of the whole, and he of the two which are found heirs by ſeverall Offices, who is found Heir by the firſt office, whether he be right heir or not, ſhall have Livery, and the later Office ſhall not ſtay him, but the other may have good remedy againſt him by Entry, or Action, 1 *H* 7 27 *Livery* 18.

XI. *How Livery ſhall be made when two are found heirs to one man, and when, and how they ſhall interplead.*

NOte, Three ſued to have Livery of one Mannor out of the Kings hands, which was ſeiſed by three ſeverall Offices, as heirs to three ſeverall men, and each ſhewed cauſe by himſelf. *Tirwith*, It hath been adjudged where diverſe ſue to have Livery, as heir to the ſame man, that they interplead, and ſo it ſeems they muſt do here, and afterwards hee was awarded to anſwer for the King, 7 *H* 44 *Livery* 22.

Babington ſaith, That if it be found in one County, that *B.* is heir to *D.* and in another County that *C* is his heir, now they ought to interplead, and the King ſhall not make Livery before, 9 *H* 6 18.

The Duke of *Lancaſter* gave lands to *B* who had iſſue *R.* who had *H.* and *J. H* entred and had iſſue *M Baſtard, &c. M* was found heir to *H* the Duke ſeiſed the ward and committed him over; the Duke being now King, *I* entred upon the Patentee, *M* within age did re-enter, *I* brought an Aſſiſe and recovered upon the matter found before, the King did pardon him all entries, *M* was found heir to *H.* his father by *mandamus I* had iſſue *R.* who is found his heir, and that he held of the King, *M* proved his age, and *R* his age, and prayed livery ſeverally, and it ſeems if livery ſhalbe that it ſhalbe to *M.* becauſe the King ſeiſed in his right, ſo of right he is bound to make him Livery. and the office found for him is not defeated by the recovery in the Aſſiſe, and ſo the Pardon void, by *Martin* and *Paſton*, and interpleading cannot be, becauſe each is Actor againſt the King, by *Cheney*: But *Babthorpe* the Kings Attorney held, that no Livery ſhould be made, for *R* ſhall not have Livery, becauſe he hath not traverſed the Office found for the ſame *&c* and he ſaid, that *M.* ſhould not have Livery, becauſe his right was defeated by the recovery, ſo the King not now ſeiſed in his right, for he ſayd that that heir who is found Baſtard at the ſuit of a ſtranger, is concluded to ſue Livery; *Quære* if that ſtands with the Reaſon of *Martin and Paſton, vi.* 2 *H.* 6. 5. *Livery*, 33.

It was found by office, that *F.* Tenant of the King dyed, and that *R* is his next heir of full age, and by another Office that *S.* is his heir within age, whereupon *S* prayed, that the Land might remain in the Kings hands untill &c. *R* prayed Livery and ſaid, that he himſelf is heir, and that S is younger by another woman, and S was put to anſwer the ſame preſently

ſently, although that he was within age, becauſe each is an actor againſt the King, *P* 36 *E*.3. *Traverſe* 44.

Huſſey ſaid, That in this caſe next before, that hee of full age ſhall have Livery preſently, and ſhall not ſtay untill the other cometh of full age to interplead, and if both be found within age, he who firſt cometh of age ſhould have Livery, *&c. Paſch.* 9 *H.* 7. 12. *Livery and Traverſe* 49.

See 5 *E*.4.4 contrary to theſe books, and that he of full age ſhall not have remedy untill the other cometh to his age, and then to interplead, *Traverſe* 6.

The King made Livery to him who was found next heir upon debate at the proving of his age, and the other brought coſinage againſt him upon the death of the ſame Anceſtor, and the opinion was, that he ſhould be eſtopped by the tryall before, yet the ſame was but an Enqueſt of Office. But *Spigg* Juſtice ſaid, that it had been ſeen, that tryall in the *Diem clauſit extremum* upon a Counter-plea of the parties in the place of *Mortdanceſter*, *M* 5 *E* 2 *Eſtoppel* 255.

X. *How the eldeſt Son ſhall come to have Livery, where the youngeſt is found Heir, and how his Heir, if he dye within age.*

IF the youngeſt ſon be found heir, no remedy for the eldeſt before office alſo found for him, and then at their full age, they ſhall interplead, as in all caſes where diverſe heirs are found by diverſe Offices, and if both have iſſue and dye, they within age, ſeveral *Devenerunts* ſhall iſſue forth, and they ſhall interplead at their full age, but if the one dyeth without iſſue, ſo as the other is his heir, he ſhall have Livery at his age, without more ado, 1 H 7 14 *Livery* 17.

Note, It is ſaid, where livery is to be had out of the hands of the King, if the youngeſt Son be found heir by *Diem clauſit extremum*, the eldeſt hath no remedy, becauſe they claim by one and the ſame title; and he cannot traverſe hisown Title but wherethe ſon claims by way of Remainder, or otherwiſe ſhews ſpecial tail to the heirs Males, and that that daughter which is found heir to her father was daughter to his eldeſt brother; there he may wel traverſe the office becauſe he is to have *Ouſter le main*, and if the ſpeciall matter had beenfound by Office, the King ought not to have ſeiſed, *&c. M* 12 *Ed.*4 18 *Traverſe* 8.

See 1 H 7 14 *Salyard* ſaith, That the eldeſt ſhall have a ſpeciall Commiſſion for to find him heir, when the youngeſt is found Heir by Office.

XI. *Where Livery ſhall be made to him who is found Heir by* Diem clauſit extremum, *where to him who is found Heir by* Mandamus, *where by* Devenerunt:

THe King ſhall make Livery to him who is found Heir by Writ, whether it be of Right or wrong, and never to him hath not an Office found for him, 1 H 7 14.

King Edward the third granted a Reverſion after the death of his Mother, to the Lord *F* in tail, all found by office after the death of his Mother, the Lord dyed before livery, and his ſon alſo, *King Richard* granted the land to a ſtranger, the new Lord ſued a *Mandamus*, and found heir by mean degrees to the firſt Donee, and vpon that ſued a *Scire facias* againſt the Patentee, and awarded that the land ſhould be reſeiſed, and that he ſhould have Livery, but no mean profits, becauſe the *King* had right to ſeiſe, 7 H 4 17 *livery* 23.

Office which found that *A* held of the *King* in taile, without ſhewing of whoſe gift, or what manner of taile it was, 15 H.7,6. *Office* 4.

XII. *Where Livery ſhall be to him who is found heir by Office, depending a Traverſe to the Office not decided.*

NOte, when the heir is found within age, and now of full age proveth his age, and prayeth livery, or being found of age prayeth Livery, or doth all that he ought to do, the Roy in right ſhall make him livery, and ſhall not ſtay him by traverſe of a ſtrange man who is not found heir alſo, or tendreth interpleading, or otherwiſe is Lord, and traverſeth the Tenure of the *King*, 1 H 7 27 *livery* 18.

Upon one point traverſed found againſt the *King*, livery ſhall be made notwithſtanding other titles depending that be found for the *King*, 13 H 4 6 *livery* 2.

XIII. *Where Livery ſhall not be made to the heir, the ſeiſure being in his Right, but a ſtranger ſhall have* Ouſter le maine, *where not.*

Abthrope ſaith, If the *King* ſeiſeth the ward of one within age, and afterwards another Anceſtor dyeth, and a ſtranger abateth, and the Infant bringeth an Aſſiſe of *Mortdanceſter*, by which he is found baſtard; Now he is concluded to have livery, and the *King* ſhall retain the land, untill

untill the right Heir ſueth for the land out of the *Kings* hands: So if I be found heir where my eldeſt brother was entred into Religion, and deroigned before livery, *&c.* by *Rolf*, 2 H 6 5.

The Reverſion of land holden of the *King*, was granted in taile to T. and his wife, who dyed without having Attornment, the land is ſeiſed, the wife had the third part for her Dower in Chancery, and after livery of the two part as Jont-tenants, and dyeth, his heir being in upon whom the heir of the grantor entreth, and well without Reſeiſor, becauſe the poſſeſſion of the *King* doth remain, ſo no diſcent, 21 *E* 3. 1 *entry conge-able* 46.

Note *Schard* ſaith, When the *King* ſeiſeth for cauſe, as for Nonage of his Tenant found, *&c.* Now in due time he ought to make livery to him, in whoſe right he entred: But if he ſeiſeth Tenements where he hath not right, as his Tenant had not but an Eſtate for life, in them, although he dyed ſeiſed in fee, of other lands holden of the *King* in cheif, there he ſhall remove the *Kings* hands without livery. And note there, That when the *King* ſeiſeth all the land of his Tenant by reaſon of parcell found to be holden of him in cheif, of that parcell he is ſeiſed in the right of the heir found, but of the reſt in the right of him who hath the beſt right, H 10 *E* 3 2.

XIV. *Where the Poſſeſſion of the Committee of the King ſhalbe avoided, and when the poſſeſſion of the* KING *ſhalbe ſayd void.*

Schard ſaith, That the Committee ſhall be alwayes charged with the profits untill he hath a Writ of *Ouſter le main*, although the King hath ouſted his own hand, before in the Chancery, & therfore entry upon him before ſuch writ of diſcharge, is an abatement upon the king, notwithſtanding the *Ouſter le main* in the Chancery: *Hill* Serje. expreſly to the contrary, And the Judgement in Chancery ſhall excuſe the entry upon the Committee, and alſo ſhall diſcharge her Committee of the profits afterwards, *vi. Fitzher.* doth not abridge the ſaying of *Schard*, H 10 *E* 3 2 *Aſſiſe* 156.

Land was ſeiſed as upon a dying, ſeiſed of the Kings Tenant, whereas in truth a ſtranger hath recovered the ſame land. and gave it to the ſecond ſon of the Tenant in taile, the remainder to the Tenant in fee, and agreed now, Upon this matter, by way of *Monſtrans de droit*, the ſon ſhal have *Ouſter le main cum exitibus*; although the Tenant had the land at the time of his death. And *Townſend and Brian* conceived, that the ſon might enter before office found. But *Huſſey* denyed it, becauſe the King King is intituled by the dying ſeiſed of his Tenant, 3 H. 7. 2 *Traver*, 12.

XV. *Where*

XV. *Where Livery shall be made to the heir within age, notwithstanding a Grant made to a stranger of the Land by the KING, where to the Heir of full age, and without process against him who hath the Land.*

NOte by *Hulls*, If the King grant land which he hath by reason of Ward to one, *Quam diu in manibus nostris fore contigerit*; now if he make livery to the heir being within age, this is good, and he shall put out the Grantee: Notwithstanding such grant, *M* 8 H 4 17. But if the grant be *Durante minoritate*, then the grantee shall hold the land, untill his full age, notwithstanding the speciall livery within age, 3 H. 7. 3.

Note by *Gascoign*, If the King alien over the Land which he hath in ward, yet the heir at his full age may well sue Livery, and put out the alienee, without any processe of Law against him, *Vi.* 7 H 4 17 *Livery* 23.

XVI. *Where Coparceners shall sue Livery joyntly, and where they shall sever in Livery.*

HEE or those of the Coparceners which first come of full age upon a Petition in the Chancery, shall have livery of their portions of the land, not of the Advowsons or things which are entire, 38 H 6 4.

Where foure Daughters were in ward as one heir, T. the eldest now of age had one Mannor extended, and delivered to her for her part, afterwards the middle daughter, and the third being of age, the middle sued garnishment against the eldest, because she had more then her part; because her Mannor was extended at twenty pounds *Per annum*, was of the value of eighty pounds, *Per annum*, and this was found before the Escheator, & although this was but an Inquest of Office, and although the Mannor was delivered to the eldest for her part, and although the third was not made party to the suit, yet all was reseised, and re-extended, H 2 *E* 3. 20. *livery* 8.

See all this agreed, 13 & 1 *Itin. North, livery* 6. That those which are first of age upon suit shall have livery, and all shall be re-extended at the suit of the other now of full age; [illegible] they have more than they ought to have, or at their requeſt, if they have lesse, so that each may have that which doth belong unto them.

XVII. *Where*

XVII. *Vvhere Lands or Tenements or Advowſons ſhall paſs by Livery without expreſs mention. &c.*

NOte, Where the King was ſeiſed becauſe the heir was found a Sotte, that after his death, generall Livery to the next heir is ſufficient for the Advowſons *&c.* without expreſs mention, becauſe the firſt ſeiſure was generall of all lands and inheritances of the Sott, *&c.* 16 *Edw.*3 *Livery* 30.

Note, that an Advowſon appendant alwayes paſſeth to the Heir by livery of the land without mention *&c.* Alſo if an Advowſon in groſſe be ſeiſed by Writ, which ſpeaks generally of Lands and Tenements without mentioning of it as it well may be, it ſhall paſs unto the heir bythe like generall Livery, becauſe by the ſame proceſs, and in the ſame degree: But if a woman ſueth the ſame out of the Kings hands for Dower, or one Parcener for her part, there they ought to have expreſs mention of it, becauſe by another proceſſe then it was ſeiſed, *&c. Mich.* 5 *Edw.* 3, 66 *livery* 7.

An Advowſon was ſeiſed by generall ſeiſure, of lands of a Prior, Alien, and upon finding that he was born in *Gaſcoigne*, a generall reſtitution being made, it was agreed by the Juſtices, that the advowſon ſhould alſo paſs without mention of it, 27 *Aſſ.* 48. *livery* 9. But a Preſentment fallen in the time of the *King* ſhall not paſs by ſuch generall reſtitution, as the temporalties of an Abbot ſeiſed, for refuſing the Varlet of the *King* to a Corody, being found to be of his Foundation and the King pardons him all Occupations, Intruſions, Contempts, Injuries, and Treſpaſſes, and reſtores them as whole as they were at the time of any of his predeceſſors, yet it was adjudged, that the *King* ſhould have the preſentment which did fall in the mean time, becauſe there was no expreſs mention made of it, *P* 46 *&* 3 *Grants* 50.

But if the reſtitution hath words, *viz.* So that he can have no right claim by the Seiſin before, with mention of the Advowſon, the Preſentment ſhall alſo paſſe, 9 E:3. 26.

The King ſeiſed after the death of him who in truth was not but Tenant for life, and upon that matter found removed his hands from the land; and a Writ to the Eſcheator to deliver the profits, yet the Heire ſhall not have the Preſentment, if the King hath preſented before the amoving of his hands, without expreſſe mention of it. Alſo it was ſaid, that by Livery of the Iſſues the Preſentment did not paſſe, becauſe it is not to be levied by the Eſchetor, no more then the monies which are paid into the Kings Coffers before, *T.* 24 *E*:3. *Quare Impedit* 10.

XVIII. *Where*

XVIII. *Where Lands ſhall be ſeiſed into the hands of the King, after the death of his Tenant by the* Diem clauſit extremum, &c. *and what ſhal be a cauſe of Seiſure.*

NOte, by all the Juſtices for clear Law, If I leaſe lands unto the Kings Tenant for life, after his deceaſe I may well enter, and the land ſhall not be ſeiſed into the Kings hands, for the *Diem clauſit extremum*, is to enquire of what lands he died ſeiſed in his Demeſne as of Fee: And ſaid, that the uſage which had been to the contrary was naught, 14 *H.* 4. 32. ſee 10 *E.* 3. 2. *Aſſiſe* 156.

The King ſhall ſeiſe the lands of the Heir of his Tenant which is found within age in one County, in all Counties and he ought to ſue Livery of the Lands in every County ſpecially, 44 *E.* 3. 22. *Livery* 25. And 44 *E.* 3. 25. agrees, where an Office of Land was adjudged ſufficient for the ſeiſing of Advowſons in groſſe.

If a ſtranger abate into parcell of the Lands of him who holdeth other Lands of the King, and dieth, his Heire within age, and this ſpeciall matter is found by Office, the King may well ſeiſe: So if the ſtranger continueth ſeiſed during the Nonage, and the Heir at his full age recover by *Mort-danceſtor*, yet the King ſhall ſeiſe, and the Heire ſhall be driven to ſue Livery of the ſame, 12 *R.* 2. *Livery* 28.

Now after the Prerogative made, it is ſufficient cauſe for the King to ſeiſe all the land of him who holdeth parcell of him in chief; but if any parcell of it be holden of the Arch-biſhop by purchaſe, before the Prerogative, he ſhall have Livery *cum exitibus*, becauſe exempted by the Statute, 16 *E* 3 *Livery* 29.

If he which holdeth of *A.* as of his Honour of *H.* by Knights-ſervice dieth, his Heir within age, and afterwards the Honour cometh to the King by forfeiture, yet he ſhall not ſeiſe the Ward becauſe the Heire is his very Tenant preſently, and he ſhall not have another Tenant, 26 *Aſſ.* 57. yet it is agreed there, that if the King ſeiſeth without cauſe, as of Land being holden of another, yet the Heir at his full age, ſhall not enter without ſuing to the King.

All the Juſtices ſaid, that when Land is ſeiſed into the hand of the King upon an Office which found the Tenant Joynt-tenant with a ſtranger, that this was as no Seiſure, and that the Land ſhall not be ſaid in the Kings hand. Alſo it is no cauſe to ſeiſe, when it is found that the land is holden of the King in Burgage, nor when it is found that the Tenant was enfeoffed to the uſe of a ſtranger, by *Markham*: And *Choke* ſaid, That if the Eſcheator ſeiſeth land for the King upon an inſufficient Office, *virtute officii*, he is a Diſſeiſor, not where it is *virtute brevis*: And the principall caſe was, that the King had ſeiſed and granted land upon Office, finding that *A.* and *B.* his wife had enfeoffed the King, and that to their uſe, and holden

holden that the Feoffment was void, becauſe no Record, and alſo the uſe, and that it is no cauſe to ſeiſe, for which cauſe a ſpeciall Writ was awarded to make reſtitution 5 *E*:4.7.and 7 *E*:4.10.

A Mannor was ſeiſed into the hands of the King, after the death of his Tenant who held other land in chief, and in the Deed he had not but an Eſtate for life in that Mannor, and this was found by Suit of him in the reverſion. But if it had been found by the firſt Office, and notwithſtanding Livery *cum exitibus*, the King ſhall have the Preſentment mean, not expreſſed in the *Ouſter le main*, *T*.24 *E*.3. *Quare Impedit* 10.

Where the Anceſtor held parcell of the King, although the other lands are in the poſſeſſion of others, which hold of them, yet the whole ſhall be adjudged alwaies in the Kings hands, and the Heir ought at his age to ſue all out of his hands, by *Markham*, which all the Juſtices agreed in the Exchequer Chamber,2 *H*:4.13.*Voucher* 50.

The Lands of him who is found to be aidant to him, which was, or is the Enemy of the King, ſhall be ſeiſed into the Kings hands, but he may traverſe the Office,44 *Aſſ*. 18.

It is a good cauſe of Seiſure for the King when the Heir is found Ideot from his Nativity; alſo the King may well ſeiſe the land holden of him in chief, being aliened by his Tenant without licence, without ſuing Garniſhment againſt any one, 32 *Aſſ*.28.

The King may well ſeiſe a Terme granted to the husband and wife, by the attainder of the husband. 32 *Aſſ*.33.

Land ſeiſed by attainder of *B*. where in truth he had the land but in the right of his wife, was well reſtored unto the Heir of the wife upon a Petition and warning given, the Heir of the Patentee being in by diſcent, 33 *Aſſ*.*Traverſe* 34.

If an Abbot recover in a Writ of Entry *ad terminum qui præteriit*, ſuppoſing a Leaſe to *A*.where in truth the Leaſe was to *B*. and this ſpeciall matter is found in Aſſiſe between him and another (*s*) the Feoffor upon Condition,there,although the right of the Abbot be found in a *Quale jus*, yet the King ſhall ſeiſe the land, becauſe he had not right by that Action, &c.44 *E*.3.8.*Entry congeable* 35.

Note, the Kings Tenant may well alien Land holden of the King in Knights Service, as of an Honour without licence, and the King ſhall not ſeiſe unleſſe that Honour was in ancient time parcell of the land of the Crown, 42 *Aſſ* 6. *Traverſe* 24.

Tenant for life aliened, the Reverſion being to a Fool-naturall, and this was found by Office, for which cauſe the King well ſeiſed the land,29 *Aſſ*. 43.*Livery* 10.

XIX *Where the King shall ſeiſe the Land without Office, where not, and where the party ſhall have Traverſe to the Cauſe of the Seiſure, where not.*

IT was ordained by Parliament, that all the Lands of *T.* Earl of *Kent*, whereof he was ſeiſed in fee the day that he made inſurrection againſt the King (in which he was ſlain) ſhould be forfeited, his Heir in Ward of the King, and now of full age, ſued forth *Mandamus*, by which it was found that *T.* was ſeiſed of a Mannor in tail, and of that the Heir prayed Livery: And the opinion of *Markham* and *Gaſcoigne* was, that he ſhould not have Livery, if the *Mandamus* was not well awarded. And *Markham* ſaid, that upon every ſeiſure for forfeiture that the king was ſeiſed in fee, and then as in no caſe where he claims in his own right, *Mandamus* ſhall not iſſue forth. And *Gaſcoigne* ſaid there, that the Lands of none are ſeiſable into the kings hands, before that he be attainted, *&c.* 7 H. 4. 32. *Livery* 21.

Upon ſuggeſtion in the Chancery, that the Lord *Clifford* being Tenant in tail of the gift of the Anceſtor of the king, had purchaſed Licence of the king to enfeoff two, and to take back the Land to him and his wife in tail, the remainder to his right Heirs in Diſceit, *&c.* and now his Son in Ward of the king, and upon ſuch ſuggeſtion, a *Scire facias* was awarded againſt the wife, and two partes ſeiſed, and ſhe charged with the Iſſues during her occupation of the two parts, and the third part was recouped for her Dower, 40 *Aſſ.* 36.

S. leaſed for life and was attainted, now the Reverſion is in the king, ſo as a *Superſedeas* was granted to the Tenant againſt him who ſued Execution of a Statute encurred before the Title of the king, and after the death of the Tenant the king ſeiſed, *&c.* Note here that the Caſe was, that the king being ſeiſed by the forfeiture of *S.* ſhould have the Leaſe, *M.* 9 *H.* 4. 5. *Petition* 15.

Upon a *Scire facias* for the king upon an Office, finding the Heir of his Tenant Ideot, and that *A.* had the Land, he claimed by Feoffment of the ſame Heire, when he was of good memory. This is cauſe enough to ſeiſe without any Garniſhment, if within the year, becauſe he hath confeſſed the Tenure and alteration without licenſe, *P.* 32 *E.* 3. *Scire facias* 106.

The king may well grant the Wardſhip of Land, to which he hath right before Seiſure or Office found for him: But if he expreſſe the grant of the land ſeiſed, which is not ſeiſed, all is void, 10 *H.* 4. 2.

The king enters into Land holden of him in chief, after the death of his Tenant without Office, *&c. M.* 2 *E.* 2 *Eſtoppell* 255.

By *Huſſey*, the Grantee of the king may well enter for non-payment, *&c.* without any demand, but he ſaid, the non-payment ought to be found by

by Office, otherwiſe he ſhall not enter, 2 *H.*7.8 *Prerogative* 10.

By judgment that the Temporalties of an Arch-deacon ſhall be ſeiſed for a Contempt, the king ſhall be ſaid, ſeiſed, without any more: And of Advowſons, although no expreſs judgment of it, 21 *E.*3.30. *Scire facias* 113.

XX. *Where the King ſhall ſeiſe without Writ, where not, and where he ſhall not ſeiſe by Office without Writ.*

NOte, an Advowſon is in the King preſently by the Office upon the death of his Tenant without more. So if it be found by Office that the Tenant of the king is dead without Heir, or that he hath aliened in *Mortmain*: But if it be found that the Tenant hath ceſſed, or done waſte, the king ought to have a *Scire facias*, *&c.* ſo if the king hath made Livery to one, and afterwards another Office is found for the king, *&c* the party ſhall have Traverſe in the *Scire facias*, 14 *H.*7.21.

Where the king grants land over, depending a Petition of it by a ſtranger, and it is found for the ſtranger, the king may well ſeiſe the land, *&c.* without any Writ to warne the Patentee, 13 *E:*3. *Brief.*260.

Scire facias for the king upon a recovery in a *Quare Impedit*, abated for want of matter; So it ſeems the king hath not actuall Seiſin without warning, 18 *E:*3.22. *Brief* 356.

The king ſhall not ſeiſe lands as forfeit for Treaſon by Office found, without *Scire facias* againſt the Ter-tenants, 18 *E.*3.26. *Brief* 360.

The king ſeiſed lands granted by him by Patent, obtained in diſceit of him and the prejudice of another, but not without warning the party, *M.* 17 *E.*3.59. *Petition* 21.

The lands of him who is found a Fool-naturall ſhall not be ſeiſed againſt a ſtranger Ter-tenant of them, without warning of him; but upou an Alienation found without licence, the king ſhall enter without any more, *&c. P.*32 *E* 3. *Scire facias* 106.

The king ſeiſed upon an Office found of the Seiſin of his Father, & being found by petition that his Father had not but by diſſeiſin, he made reſtitution. And it was now found by another Office, that the Father died ſeiſed of Land, Meadow, Rent, *&c.* in *C.* where the firſt was of the Mannor of *G.* in *C.* And the opinion was, that the king ſhould not ſeiſe the land without warning of the party, for it was holden all one, when a later title is found for the king by the laſt Office, and when Title before, *&c.* that is to ſay, that he ought to give warning in every caſe, by the Statute of *Lincoln*, 9 *E:*4.51. *Traverſe* 7.

See where upon the like reſtitution, being after a Charter found in the Treaſury, by which the party had enfeoffed him, who he ſuppoſeth had diſſeiſed him, the king did ſeiſe without more, *M.* 24 *E.* 3. *Traverſe* 21.

Green ſaith, that the king may well ſeiſe lands holden of him without licence aliened within the year after his Title, without any ſuit, to which the Juſtices agreed, 29 *Aſſ.* 30. *Traverſe* 28.

Upon Office found, that *T.* Tenant of the king in *London*, died without Heir, the king granted the land to *B.* for life, this was good: And he who claimed by the Deviſe of *T.* driven to ſue to the king, 29 *Aſſ. Traverſe* 29.

No ſeiſure of lands of the Debtor of the king dead being found by Office in the hands of ſtrangers, without proceſſe againſt them, 32 *Aſſ Traverſe* 33.

Upon a ſuggeſtion in Parliament, that the Purparty which was betwixt the husband of his Mother, and others, was not equall in value, and that a ſtranger had recovered parcell, *&c.* the one Mannor was ſeiſed with proceſſe againſt any, and aſſigned to him who made the ſuggeſtion, *&c.* 42 *Aſſ.* 22. *Aſſ.* 349.

When the king makes Livery upon an Office which is not ſufficient, he ſhall reſeiſe without any *Scire facias* ſued; which he ſhall not do for another right found for him, if the Office were ſufficient, *P.* 13 *E.* 3. *Licence* 3.

XXI. *Where the King ſhall be preſently in poſſeſſion by Office found, and where not before entry upon it.*

THe King is poſſeſſed of an Advowſon preſently by the Office found: So of land aliened in *Mortmain*, and where his Tenant dieth without Heir, by *Mortdant*, *H.* 14 *H.* 6. 21 *Livery* 34.

And the Office alone ſhall make Title for the King to preſent, 21 *E.* 4. 2. whether it be to an Advowſon appendant, or in groſſe, by all the Juſtices, and the Patron out of poſſeſſion by the Office found for the King. And ſee 17 E. 3. 10. the opinion of *Thorp. acc.* But *Schard* contrary, and that he ſhall not be out of poſſeſſion by the Office, but it is ſufficient to bring the Avoidance in queſtion and debate, and there it is ſaid, that this is the common opinion of an Advowſon in groſſe.

Choke ſaith, That if an Abbot bring *Darrein preſentment*, and it is found for him, and the Colluſion is alſo found, the King ſhall have a Writ to the Biſhop without more, 21 E. 4. 3.

Upon Office found for the King after the death of his Tenant he granted the Ward without more ſeiſure, 9 *H.* 4. 6. 10 *H.* 4 2, *Traverſe* 50.

The King ſhall ſeiſe lands holden of him being aliened without licence, without any Suit within the year, 29 *Aſſ* 30. 32. *Aſſ.* 28 *acc.*

It was found by Office that *H. S.* who forfeited to the King, was ſeiſed of the Mannor of *D.* and leaſed the ſame for life to *J.* ſaving the Reverſion, and that *J.* is dead, and now *T.* is Tenant, by which the king ſhall have a *Scire facias* againſt him (ſo not ſeiſed by the Office) 40 *Aſſ.* 24. *Traverſe* 23.

XXII. Where

XXII. *Where the King ſhall reſeiſe and make Livery upon it, and what ſhall be a Cauſe of Reſeiſure.*

NOte, That in every caſe where a man ſues Livery of parcell out of the Kings hands, and of parcell not, all ſhall be reſeiſed, 7 *H.*4 17 So where he ſueth Livery in one County, 44 *E.*3.12. *Livery* 25.

Alſo 7 *H* 4 17. The King being ſeiſed during the nonage of the Lord *Ferres* his ward, aliened in fee; the Lord now of age ſued a *Scire facias* againſt the Pattentee, (but note that he needed not to do) and adjudged that the Land ſhould be reſeiſed, the Patent repealed, and Livery made.

The Lord *Burgh* ſued livery without making mention of an Advowſon in groſs, which alſo was not ſeiſed into the Kings hands, and awarded, that all ſhould be reſeiſed, 44 *E* 3 25. *livery* 26.

Note, If a man be found heir to the Kings Tenant, where he is not heir, and hath livery, and afterwards by another Office, the true heir is found. *Clopton* ſaith, That the Land ſhall be reſeiſed, which was denyed by many, and that oftentimes it had been adjudged that no reſeiſure ſhall be where they are of full age, but if within age, ſome colour ſhalbe for it, and the principall caſe was, That a ſtranger abated into parcell of the land holden of the King after the death of his Tenant, whoſe heir female was married within age to a man of full age, and now they have livery of the land without mentioning that in the poſſeſſion of the Abator, and by the opinion all ſhall be reſeiſed. Alſo if the heir recover at full age in a *Mortdanceſter*, yet the King ſhall ſeiſe, 12 *Rich.* 2 *Livery* 28.

It was found by Office, that *I.* H. had licenſe to alien land holden of the King, and to take back the ſame to him for life, the remainder to *G.* *H.* his eldeſt ſon and *M* his wife in taile, *&c.* upon which *G H and M* had livery thereof out of the Kings hands, and afterwards it was found by an Ancient fine in the Treaſury, that *J H* had but fee tail, ſo the King was deceived, and the livery holden void, and all was reſeiſed *&c.* T 21 *E.* 3. *livery* 22. 40 *Aſſ.* 36. *acc.*

George T*albot* ſued by Petition for lands ſeiſed into the Kings hands by colour of a forfeiture, and his right found by a ſpecial Commiſſion, and that the Anceſtor did not forfeit any thing, and hanging this Suit, the King granted the land over to three, and now ſued a *Scire facias* againſt them, and two of them appeared, and ſayd, that the third is dead, yet it was holden, that the land ſhould be reſeiſed. For *Wilby* ſayd, that the King might well have reſeiſed without ſuit, 13 *E* 3 *Brief* 760.

The *King* gave leave to his Tenant to alien and take back the Land in taile, he aliened to two upon condition accordingly, and dyed before taking back, the *King* ſeiſed his heir for other lands, and upon a *Scire facias* againſt the feoffees, it was awarded that thoſe lands ſhould be ſeiſed

ſed into the *Kings* hands, yet they ſhewed eſpecially; how that they were ready in the life of the Tenant, and had delivered his wife dower, and yet are ready to make the eſtate to the heir, if they may have a new licenſe, *H* 19 *E*. 3. *entry congeable* 39

Mordant ſaith, If the *King* maketh livery to one, and afterwards an Office is found for the *King* yet he ſhall not reſeiſe, but he ſhall have a *Scire facias*, and the party ſhall have his traverſe, *&c.* 14 *H*. 7. 21. See 30 *Aſſ* 31. *traverſe* 31. where one daughter found heir ſhall have livery, and by another office is found alſo Co-heir within age. Now a *Scire facias* ſhall be awarded, and all the land reſeiſed, notwithſtanding a ſpeciall taile alledged to the Father and Mother of the firſt daughter, becauſe that Taile was not found by the Office, but generally that ſhee was heir.

The Land of a Felon holden of another, was re-ſeiſed after the *King* had the year, day, and waſt, becauſe the Lord entred without proceſs of the Exchequer, 8 *E* 2 *traverſe* 48.

XXIII. *What ſhal be ſayd Intruſion upon the Poſſeſſion of the King, and where abatement.*

IF a man recover land againſt the *Kings* Tenant by his aſſent, and afterwards he dyeth ſeiſed, and he who recovereth entreth and maketh eſtate according to the will of the Tenant, the ſame is intruſion upon the poſſeſſion of the *King*, although it be before Office found, by *Huſſey*. *Townſend* denyed it, becauſe here the *King* is not entituled to have the Wardſhip upon the matter, ſo by him, and with him the opinion of the Court ſeemed to be, if he had ſhewed it only by *Monſtrans de Droit*, without traverſing the dying ſeiſed as he did, as I may well enter after the death of my feoffee upon condition, who was Tenant of the *King* for condition broken, and it is no intruſion. And *Brian* agreed with *Townſend* that the dying ſeiſed after the recovery ſhall not hurt. *Huſſey* contrary, and the *King* is intituled by it, See the book, 3 H 7 2 *Traverſe* 12.

Note by *Gaſcoigne* and *Hulls*, If a ſtranger abate upon the poſſeſſion of the *King*, where he is ſeiſed by the nonage of the heir of his Tenant, That yet the free-hold doth remain to the heir, becauſe the poſſeſſion of the *King* cannot be deveſted by ſuch Abatement, 8 H. 4. 17. *Traverſe* 14.

Note, Continuance of poſſeſſion of him who was Joynt-tenant with the Tenant of the *King*, who was attainted, is no intruſion upon the *King*, otherwiſe it is of the wife of him who was attainted, where they had a Term for years in joynture, *&c.* 32 *Aſſ. traverſe* 33.

XXIV. *Where*

XXIV. *Where the* KING *shal be anſwered the mean Profits, and by whom, and where another perſon ſhall have them.*

WHere a ſtranger abates after the death of the *King*s Tenant, and before any office found, yet the *King* ſhall be anſwered the profits from the time of the death of his Tenant, 3 H 7.3.

It was found, that a man outlawed of felony had land, whereof he had enfoffed T after the Outlawry, and now T came ready to traverſe the office, becauſe a ſtranger, and of that the Court would adviſe, becauſe the outlawry was of record, but the year and waſt was ſeiſed for the *King*, and T ſhall anſwer him for the profits paſt taken, &c. 49 *Ed.* 3 11 *traverſe* 19.

Where the *King* recovers lands by the Forfeiture of any, he ſhall be anſwered the profits from the time of the forfeiture, and as it ſeems of every one for his time, and where the one parcener hath the land in partition, ſhe prayed that her ſiſter might be charged *Pro rata*, becauſe ſhe had other lands in the place of them, 40 *Aſſ*: 24. *Traverſe* 23.

The King ſhall have the mean profits of their lands which were adherents to his Enemies, *&c.* 43 *Aſſ*: 28.

The King was anſwered the mean profits againſt the Lord of whom, *&c.* who entred after the year, day, and waſte of the King, without due proceſs of Law to the Eſcheator, and the land reſeiſed, 8 E. 2. *Traverſe* 48.

If the Heir now of full age recover in a *Mortdanceſter* againſt the Abator, yet the Abator ſhall anſwer unto the King of whom, *&c.* all the mean profits from the time of the death of the Anceſtor, *quod nota*, for the Heir alſo had recovered damages before, *&c.* 12 *R.* 2. *Livery* 28.

The King ſhall be anſwered the mean profits, by forfeiture againſt the wife Joynt-tenant with her husband during his life, *&c.* 26 *Aſſ.* 57. *Livery* 33.

Where the Biſhop leaſed parcell of the Barony of the Biſhoprick, rendring forty pounds *per annum*, and afterwards by the aſſent of the Dean and Chapter releaſed thirty pounds, *&c.* upon that found (which is a forfeiture in Law) it was awarded that the King ſhould be anſwered forty pounds for every year, and of every one for his time (*s*) of the Leſſee for the years for which he had not a Releaſe, or diſcharge, *&c.* *H*: 46 *E.* 3 *forfeiture* 18. And ſee there that the King took but a Fine of the Biſhop for the forfeiture.

The King licenced his Tenant to alien and to take back he alieneth, and before the re-feoffment made, dyeth his Heir within age, and in Ward of the King for other land, upon this matter found, the land ſhall be ſeiſed, and the King anſwered the mean profits from the death of the Tenant, *H*: 19 *E.* 3. *Entr. conge.* 39.

When

When the King giveth leave to his Tenant to alien, as to hold in fee, whereas he hath but in tail, this is void. and he ſhall be anſwered the profits from the Alienation: But where he took back the land to him and his wife, ſhe ſhall anſwer but the two parts, becauſe ſhe had right before to have the third part for Dower, 40 *Aſſ.* 36. *Guards* 1. *vi.* 21 *E:* 3. *Liverȳ* 32 *acc.*

Where a man ſhall loſe his land by Diſceit in the Sheriff, as where he makes no ſummons, or returneth him ſummoned, who was dead, *&c.* and the party is to have his land again upon it. *Herle* ſaid, that it ſhould be good Law, that he ſhould have the mean profits: But the Law is, that the King ſhall have them *&c* 8 *E:* 3. 6. *Diſceit* 7.

Where the Diſceit was found of not ſummons, and the land reſtored, he prayed alſo reſtitution of the mean profits, *quod tota Curia negavit*, *T.* 50 *E.* 3. 18 *Diſceit* 32 13 *R.* 2. *Diſceit* 34. *acc*

Upon Diſceit found, the party ſhall have his land again back, and damages, and the King the mean profits, and the cauſe is, becauſe at the Grand Cape the land ſhall be taken into the Kings hands, *P* 12 *R.* 2 *Diſceit* 33. and with that agrees, *P.* 2 *E.* 3. *Diſceit* 46. where *Herle* ſaith, that the Writ of *Diſceit* commands the Sheriff for to ſeiſe the land into the Kings hands, and that he ſhall be charged with the profits in his Account upon the Diſceit found, *&c.*

But ſee 12 E. 2. *Diſceit* 53. where upon the Diſceit found, the party had his land with the profits in the mean time without damages. Of the profits agrees, 17 *E.* 3. 12. *Diſceit* 36. and *P:* 43 *E.* 3. 32. *Diſceit* 27. and 41. *E.* 3. 2 it was adjudged that the party ſhould have the profits from the day of the Execution unto that Writ. *Candiſh* The King ſhall have the profits after the Writ brought. *Thorp*, The ſame hath not been ſeen before now.

The king grants the Bayliwick of a Forreſt in fee, rendring rent, and afterwards he grants the Forreſt over, the Baily is attainted, the Grantee of the Forreſt occupieth the ſame, he is chargable to the king for the rent and the arrearages, for that was made in groſſe by the Grant, 26 *Aſſ:* 60. *Grants* 74.

The king granted a Market to one, *Proviſo* that it be not to the Nuſans of another, and afterwards it was found, that it was to the Nuſans of the Market of the king in *D. &c.* Now the Letters Patents being annulled for that, the king ſhall be reſtored alſo to the iſſues and profits alſo taken by the Patentee, in the mean time, by *Hulls*, for cleer Law, which was granted, *M.* 11 *H.* 4, 5. *Judgment* 69.

If a Biſhop ſeiſeth lands purchaſed by his Villain (which is not lawfull if it be not deſcended to the Villain) *Belknap* ſaid, That the land ſhall be ſeiſed for the king, and he ſhall be anſwered the profits after ſuch entry of the Biſhop *M:* 41 *E:* 3. 21. *Mortmain* 5.

Note, the king ſhall be anſwered the profits of the land recovered by an Abbot from the time of the Judgment, untill the Colluſion tryed, although

though that the Title be found for the Abbot, 20 *H.*6: 38. *Office of Court* 4. and this is by the Statute of *Weſt.*2. *cap.* 32.

Where the king ſueth a *Scire facias* for the lands of *B.* which is a fool naturall, although that *B.* dieth, depending the writ, yet if he were a fool-naturall, the king ſhall be anſwered the mean profits, and the lands ſeiſed, for otherwiſe the king cannot make delivery to the next Heir as he ought, *M.*18 *E.*3. *Scire facias* 10.

He who is indicted of felony, takes the Church, and flies from thence, and in purſuit was ſlain, the king ſhall have year, day, and waſt, and the mean profits, 3 E.3. *Itin. Corone* 290.

The Sheriff ſhall be charged with the profits of the lands of him who was preſented to have killed another, and now hath his pardon, as well for thoſe after the Charter of pardon, as before, 3 *E.*3. *Corone* 108. See of that 4 E.2. *Corone* 374. and that although it be the land of the wife of him who was indicted, becauſe he is alive.

XXV. *Where Interpleader ſhall be by two, when they are to have* Ouſter le main, *and of Enterpleader in a Writ of Ward.*

NO Enterpleader but when both are of full age, and each hath an Office found for him, 1 *H.*7. 14. *vi.* 43. *Aſſ.* 10. *Traverſe* 25. that there muſt be Office for each of them, otherwiſe they ought to traverſe.

Where one prayeth Reſtitution of his land ſeiſed upon Office found that he was adherent to the Kings Enemies, which he traverſeth, and another prayeth livery of the ſame land by Patent of the King, *&c.* the Patentee ſhall have the Livery, and the other ſhall try his Traverſe with him, and it was found for him, for which he had Reſtitution, 43 *Aſſ.* 28. *Traverſe* 26.

In a Writ of Ward by two ſeverally, they enterpleaded. But *Paſton* ſaid, That yet it behoves the Defendant to excuſe himſelf of the wrong, as that he took him for cauſe of Nurture, 19 *H.*6. 3. *Enterpleader* 7.

And the Enterpleader ſhall be in proper perſon, and though that all appear at the firſt day by Attorney, it ſhall not be commanded to the other Attorneys to have their Clients there at the day: but they ſhall appear upon *Scire facias*, and not otherwiſe, *per Curiam*, 30 *E.*3. 5. *Enterpleader* 56.

Where there were two Plaintiffs, and the Defendant ſaid that he claimed but by Nurture, *&c. Thorp* commanded the Attorneys that each of their Clients ſue *Scire facias* of the other, to be here to enterplead; and afterwards the wife did ſurmiſe that a ſtranger had another Writ, *&c.* and although by ſuch means the delay might be infinite, yet day was given over. *Thorp* ſaid, that he who recovereth ſhall have damages againſt every one who declares, 31 E. 3. *Enterpleader* 13.

Where the Defendant pleaded only as Guardian for Nurture, he muſt

have the Infant ready, *&c.* 24 E. 3. *Enterplead.* 17. and it is no excuſe that the Infant lyeth ſick in danger of death, or that he otherwiſe cannot come, *M.* 24 E. 3. and the Heir ſhall remain with the Defendant till the controverſie be decided, 7 *H.* 5. 9. And if one make default, the other ſhall have the Infant delivered to him, 8 *E.* 3. 45. And it is a good Counterplea of Enterpleader, that the Infant is married, 8 *E.* 3. 45. 7 E. 2. *Guards* 121.

Grants of the King.

1. *Where the Grant of the King before time of memory is now good, and ſhall be pleaded againſt the King, or parties, with Confirmation.*

THe Charter of King *Henry* the firſt was alledged to prove the Biſhop of *Exeter* Patron of the Priory of *Plimpton*, where it was of a Grant made *Canonicis quos ſ. Epiſcopus de E. poſuit*, and it was not allowed, becauſe it was no direct proof of the foundation. Alſo it was averred for the King, that the Soil upon which the Priory was built, was given to Chaplains, *&c.* before the Priory made: And there was no Charter of the King of expreſſe grant of the Patronage ſhewed, *&c.* 38 *Aſſ.* 22. *Grants* 1. See that that Charter was before time of memory, and not challenged for that.

The Abbot of *Glaſſenbury* had Conuſans by a Charter of *William* the Conqueror, with Confirmation of *Hen.* 1. and alledged allowance in the Common Pleas, in an Aſſiſe in the time of King E. 3. 12 H. 4. 13. 34 *Aſſ.* 14.

And 12 H. 4. 23. It is holden that the Grant of the King is of Record, and therefore ſhall be well pleaded, although it were made before memory if he were King at the time, *Avowry* 58.

And 7 *E.* 3. 5. Appropriation alledged by a Charter of *William* the Conqueror, and nothing challenged, but that the Appropriation by the Charter of the King is nothing worth, 39 *E.* 3. 21.

But 10 E. 4. 6. and 2 E. 4. 21. It is agreed, that the Charter of the King nor no other Record made before memory, is nothing worth now. And therewith agrees 8 H. 6. 4. and 19 H. 6. 75 by *Newton*, Notwithſtanding allowance in the Common Pleas, where it was never allowed in Eyre, and that it ought to be allowed in Eyre, See 24 *Aſſ.* 24. And that Conuſance in Aſſiſe ſhall not be granted without a ſpeciall Grant and allowance.

See 3 E.3. *Itin. Not.* Charter of *Hen.* 2. to be quit of Pontage, Murage, and admitted good.

Skreen ſaith, That the King ſhall not be received to avow againſt the Deed of his Anceſtor, which was before time of memory, 12 H.4.24.

A Charter of Exemption of Jury, or of Conuſance before time of memory, is not good, without a ſpeciall allowance, *&c.* by *Paſton* and *Fane*, 14 H.6.12.

II. *Where the Grant of the King ſhall be good by the words* Ex gratia ſpeciali mero motu, &c.

SEe 2 H. 7. 13. Where the King rehearſing the Statute of *Mortmain*, grants to *J.S.* that he may give ten pounds rent *Cuidam capellano*, not naming him; alſo there was no Chantry before, yet the rehearſall, the ſpeciall words, and the Conſideration (*s*) the Grant for twenty pounds proved his Will; ſo a ſufficient Warrant to the Grantee to endow the Chantry and to give the Annuity, but he cannot grant it with Diſtreſſe.

9 E. 4. 12. The king recited, that *Baggot* was born in *Normandy*, (whereas he was born in *France*) made him Denizen, and the Patent good, notwithſtanding the falſe recitall, for his intent was to make him Denizen.

Choke ſaith, That if I be indicted, and the King pardons me by the name of *T.B.* where my name is *T.E.* if the Charter be *ex mero motu*, I ſhall have avail of it by ſpeciall pleading, which I ſhall not have if it be *ad inſtantiam partis*. *Brian* held both void, becauſe the king is deceived in his Grant, 21 *E.*4. 48. So alwaies for non certainty the Grant of the king ſhall be void notwithſtanding thoſe words: See there, where the Conſideration alledged in the Grant ſhall be averred: and where it is matter of Record, a thing to be done, and for the advantage of the king, *vi.* 26 H.8.1.

Note, the king may well ſay againſt his Charter of Confirmation, which is *ad inſtantiam partis*, *&c.* that there was no ſuch precedent Grant, but where the Confirmation is, *Ex mero motu*, he ſhall be eſtopped, 9 H. 7.2. *vi.* 8 H.7.3. *acc.*

III. *Where the Grant of the King ſhall be void to all intents, and where to parcell, and what things the King may grant, and what he may not, which ſeem doubtfull.*

KNivet ſaith, If I hold two Mannors of the King, the one in chief, the other in Socage, if he give me licence to give them in Mortmain,

without reciting of the Tenure, yet if the Charter hath the words *ex gratia ſpeciali*, this is good for both, but otherwiſe it ſeems it had been void, as to that which is holden in chief, for the great miſchief &c. 4 *Aſſ.* 19. *M.* 33. *E.* 3. *Grant* 103. That ſuch a generall licence ſhall not ſerve, if it be holden of the king in chief.

Note, where the King granted to the Biſhop of *S.* that he ſhould not be impeached, nor charged of Felons and Thieves, eſcaped this is void where the eſcape is voluntary, and good where by negligence, for that which lieth but in *pœna pecuniaria* may be remitted and diſpenſed with by the King, before it be done, as a Grant to the Tenants of a Town, that they ſhall not be amerced for not apprehending of Thieves, 3 H:7:15.

The King granted to the Earl of *Northumberland* that he ſhould be Sheriff of *N.* for the term of his life, with all offices to the ſame appertaining, rendring 100 l. without accompt or any other thing rendring, the opinion of the Juſtices was, that the grant is good, with a *Non obſtante*, for the Statute of 23 *H.* 6. *cap.* 3. and that he ſhall have the offices incidents, and that he ſhall make no accompt, if not of the Green wax, but he ſhall accompt for that, 2 *H.* 7. 6.

Huſſey ſaith, That if the King grant to me all Fines and amerciaments of his Tenants in *D.* yet I ſhall not have the amerciaments *&c.* of ſuch which held of the King and others, becauſe he is not wholly Tenant to the King, alſo ſuch generall grant ſhall not extend to amerciaments royall, 2 *H.* 7. 6. 22 *Aſſ.* 49.

Note, that the grant of the King to be quit of repairing of Bridges, Cauſyes and walls, ſhall be a good diſcharge of Contributions and Taxes for the reparation: alſo it ſhall be a good diſcharge of Murage and Pontage &c. which is taken of the paſſengers to a Town, but where it is charged by reaſon of Land, or a Seignorie, or otherwiſe, time out of mind &c. to make a Bridge &c. he ſhall not be quit of that, no although he hath been acquitted of the ſame in a *Quo Warranto* between the King and him, for that was not at the coſts of the party, ſo it ſhall not help him upon a preſentment *&c* 3 *E.* 3. *Itin. North. Aſſiſe* 445.

The Grant of the King, which is contrary to the liberty of the Kingdome, is void, as the Grant to the Chancellour of *Oxford*, that he ſhall not be impleaded &c. but he may alter the place of impleading by Grant, but not the ſubjection to the Law *&c.* without Parliament, 8 *H.* 6. 19. 12 *E.* 4. 19.

Grant of the King of Conuſans *&c.* is void, where there is not a certain Judge appointed in the Charter there, 44 *E.* 3. 1 *Ch.* 4 1.

A Grant in derogation of the people is void by *Hank.* 12. *E.* 4. 13. A Grant of the King of Land, of which he is not ſeiſed in fact. is void, as of the Lands of a man outlawed in Treſpaſſe, yet of thoſe Lands he takes the profits, 9 *H.* 6. 20. *vide* 10 *H.* 4. 2.

But ſee 13 *H.* 4. 7. that the Land of a man eſpecially attainted by Parliament, is inthe king preſently to grant.

Where

Where the king grants an office, naming it, where as there was no ſuch office before, this is void, 13 *H.*4.17. 9 *E.*4. 6. *Bagots Aſſiſe*, 8 *E.* 4.8. 9 *E.*4 12.

Grant of an office to him who hath not skill to uſe it, it is holden void by the Juſtices, as the Office of Clerk of the Crown, 9 *E.* 4.6. by *Billing*.

Vide C. 11. *part* Auditor *Curles* Caſe, a grant of an office to two, *conjunctim & Diviſim* of an Office, if one dies, the grant is void.

Alſo Grant of the office of Preignothorie, and the like, made to two jointly, is void, for that but one ſhall keep the Rolls, 18 *E.*4:7.18 *E.*4. 17. of a Corodie, *vide Curles* Caſe, *acc.*

See by *Littleton*, if the king make a Confirmation to him that hath an office before by a void Grant, all is void, becauſe the king intended the the firſt grant was good; the ſame law is of a new grant of the king, where it hath ſuch intendment, as if he grant upon a falſe ſuggeſtion, or is otherwiſe deceived, 11 *E.*4.1. 9 *H.*6.18.

Note, by *Gaſcoigne*, that the Grant of the king which is not good, without taking away the Common Law, ſhall be void, as if he grant to Mayor, Bailiffs, to hold plea by Charter, where they have uſed to hold plea time out of mind &c. by writ. It is ſaid, that this acceptance of the Charter ſhall bind them, 8 H.4.18.

The king reciting that *H.* held of him in chief, granted to *T.* that at what time *H.* ſhould die, his heir within age, that he ſhould have the Wardſhip of him, and at the laſt, the grant was holden void, as every ſuch grant before office, by the Statute of 18 *H.*6, but it was ſaid, that that Statute was made in aid of them who were ouſted by ſuch grants and ſeiſures, and not for the advantage of the king, *Grants* 91 30 *H.* 6. *Keble* held ſuch Grant, of the Ward void, 21 *E.*4.46. See 19 *H.*6.62. by *Marckham* contrary.

But the king may well grant a thing which he hath not, nor never ſhall have, as Offices, 1 *H.*7.29 Franchiſes, liberties, Toll and the like, 13 *H.* 4.17. 6 *E.*3.32. So all ſuch things which are in him by Law, by reaſon of his Crown, but he cannot grant unto another to do that which he himſelf cannot do, but onely by his Prerogative, as to make Corporations, for he cannot grant his Prerogative, nor his Crown, 49 *E.*3.2. nor for pardons, felonies, 1 *H.*7.5.43 *Aſſ.*10. *Vide C.*9. *part.* the Abbot of *Strata Marcellas* Caſe *acc.*

A charter of exemption from Juries, and to collect Tithes is good, ſo long as there be enough to be Jurors, and to be Collectors above the Grantees, otherwiſe not, and ſuch grants, ſhall be Charters of diſcharge more properly then of Grant by *Fitzherbert*, who voucheth the opinions of *Utton* and *Ilſton*, 20. *H.*6.13, 21 *E.*4.45.

And ſee 13 *H.*4.18. that the grant of the King being in charge of the people, ſhall be good, where it is for the Common wealth, although there were no ſuch before, as Toll, Pontage &c.

The King granted a Rectorie &c. and that he &c. ſhall be diſcharged of

of Tenths and Fifteens, and granted to him by the ſame Charter to appropiate three Churches, *Quære*, if theſe ſhall be diſcharged, 19 H.6.62.

Note that the King may well grant things in action which are certein as a debt &c. otherwiſe not, 5 *E.*4.10. *vide* 3 H.7.9.19 H.4.7.

The King granted unto the Citizens of *London*, that no battels ſhould be waged againſt them, and in an appeal by a Citizen after the battell waged, the Charter was ſhewed for the Citizens, and the Juſtices would adviſe of it, 20 *E.*3. *Corone* 125.

The Tenant of the King, before the Statute of *Quia emptores* &c. aliened parcell to hold of himſelf without Licence, the King ſeiſed the Land, and rendred the ſame to the Feoffee to hold of him, it was void, as to the Tenure, becauſe the King hath not any Freehold by the ſeiſure, 20 *E.*3. *Aſſiſe* 122.

Generall Rules of the Kings Grants.

So ſee upon theſe grounds, that a generall Charter of the King, which comprehends divers things, ſhall be void in that part, which is the greater loſſe to the King &c. or in that which is a grater offence of the party,
1. or in that which is of another nature, and imports greater Priviledge, or
2. in that which is prejudiciall to many, or in that part which is to be a
3. charge to the Kingdome.
4.

5. The Grant of the king ſhall be void in all, when a ſtranger is prejudiced by it, and that by covin of the party, and where it is in prejudice of
6. the people, and when it is againſt the Common law, *Vide* 11 H.4.74. *C.* 11 *part* in the Caſe of the Monopolies, 13 H.4.13. *acc.* 21 *E.*4.47. *Redman.*

7. And when the principall thing granted was not before, and when the
8. King is not ſeiſed in fact or in Law, nor hath expectance to have the thing,
9. and when he is deceived in the manner of his Title, or otherwiſe, and
10. when the thing granted is parcell of his Prerogative, and when by ſuch
11. Grant the Ordinary execution of the Law is taken away, and when it is
12. not certain, *Vide* 21 *E.* 4. 28. *C.* 11 *part*, the Earl of *Devonſhires* Caſe. *acc.*

The king cannot grant that to two which one alone of neceſſity is to do, nor that to one which he knows not how to uſe, as an office &c. Nor that which is his Prerogative.

Doubtfull Grants.

The Grant of the King is doubtfull if it be good or void, when it hath
1. two entendments or conſtructions, when the thing granted is not in the
2. king, when the party hath not the thing at the time &c: by which he
3. ought to take advantage of the Grant. And note, that the king himſelf ſhall have the conſtruction of his doubtfull grant, 8 *E.*3.2. alſo the grant is doubtfull where it wants expreſſe words according to its nature; as Advowſon claimed by word in a Charter of poſſeſſions, *vide* 39 *E.* 3.21.17 *E.*3.40. and for a good conſtruction of a doubtfull grant of the king, See
4. the books of 6 *E.*3.52. and 12 *Aſſ.*

IV. *Where the Grant of the King of amerciaments &c. by theſe words,* Coram quibuſcunque Juſticiariis noſtris *&c. or* in quibuſcunque Curiis noſtris, *ſhall be good.*

THe King granted to the Dutcheſſe of *E. Inſulam habend. ſimul cum amerciamentis &c.* (good, as to that after the *habendum*) *omnium gentium & tenentium, reſident. & non reſident.* and the opinion was, that ſhe ſhould not have amerciaments nor iſſues forfeited in the Common-Pleas &c. but theſe forfeited and loſt within *infra Inſulam*, 9 H 6.27.

Note, that by ſpeciall words, the King may grant to me to have amerciaments in the Lands which I or my heirs purchaſe after, 38 H:6.10.

Huſſey ſaith, that if the King grant to me Fines and amerciaments which fall before his Juſtices, and doth not ſay before which Juſtices, it is a void grant, 21 *E.*4.48.

The Grant of the King of the Chattels *felonum & fugitivorum, qualitercunque damnatorum*, doth not extend to the Chattells of him who kills the Kings Meſſenger, becauſe that in a manner doth touch the King himſelf, as high Treaſon doth, 22 *Aſſ.*49.

See there the Grant of Conuſance generally, doth not draw Conuſance in an Aſſiſe, and the Grant of Return of Writs generally, doth not give return of ſummons of the exchequer.

Note *Strange* and *Babbington* ſay, That if the King grant to me Conuſance of all manner of Pleas, *motis coram quibuſcunque Juſticiariis ſuis*, Yet I ſhall have Conuſance of no Plea, which of Right doth belong to the Kings Bench, becauſe it is of a higher nature, 8 H:6:21.

V. *Where the Grant of the King ſhall be void, and adnulled by default of the Grantee, in a* Scire facias *againſt him, where by Non-ſuit, and where by Judgement.*

THE King ſeiſed a Ward upon an Office, and granted it to *B.* and afterwards came one H. and traverſed the Office, and had a *Scire facias* againſt *B.* who being returned warned did not appear, for which it was agreed, that his Charter was void, alſo agreed that H. having the Land untill the matter ſuch be diſcuſſed &c. being nonſuit upon the traverſe in the Kings Bench, his Pattent is alſo void, 4.*E.*6.22. *Traverſe* 1.

In a *Scire facias* to repeal a Patent granted upon Offfce found &c. the defendant prayed aid, and at the *procedendo* ſaid nothing &c. for which the Court ſaid to the Plaintiff, that he ſhould ſue a *Procedendo ad judicium*, 8 H.4.31. *Scire facias* 61.

Upon

Upon default of the Patentee, being returned warned at the *Scire facias* upon Petition to repeal the Patent, the patent is void. 17 *E.*3.57. *Petit.*21.

See the opinion of the Juſtiees, 4 *E.*3.22. That where the party upon his traverſe tendred, hath the Land to farm by the Statute, 25 *E.*3. and it is adjudged that the Traverſe doth not lie by this Judgement, the Patent is void, *Traverſe* 5. *Quære*, if the King ſhall be reſtored to the mean profits by ſuch avoiding &c. for where the Patents are repealed for cauſe within them, and he ſhall have the mean profits, *vide* 11 *H.*4. 5.

VI. *Where the Grant of the King ſhall be good for that thing which cometh after the* Habendum, *although it be no parcell of the thing granted before, where not.*

THE King grants to *E. Inſulam*, and a Caſtle *cum pertinentiis, ſimul cum amerciamentis, et exitibus, advocationibus* &c. It is a good grant for the whole, 9 H.6.27.

The King ſeiſed of a Mannor with an Advowſon appendant, leaſeth the Mannor for life, and by another Charter reciting that Grant, he grants the ſaid Mannor *Habendum una cum advocatione Eccleſia* &c. the clear opinion is, that the Advowſon doth not paſſe, becauſe it was ſevered from the Mannor by the firſt grant, 38. H.6.34.

See 8 H.7.4. Holden by all the Juſtices, that this clauſe *una cum* being before the *Habendum* is a copulative &c. and if it be after the *Habendum*, it ſhall not make any thing for to paſſe, which is not parcell nor incident to the thing granted before.

VII. *How the Kings Grantee of Fines and Amerciaments ſhall come to levy them.*

THe King grants Iſſues, Amerciaments, *Omnium reſidenti & non reſident. &c.* and further that the Grantee may levy them *Per ſe vel miniſtros ſuos:* And it was agreed that by the laſt words the Sheriff ſhall be allowed for them upon his account; but it ſhould not be to buy the Grant without theſe words, but he ſhould be charged, and the Grantee ſhould ſue by Petition, for ſuch a Grant lyeth in Allowance of the Sheriffs accounts, 9 *H.*27.

VIII. *Where*

VIII. *Where the King ſhall avoid his Grant for cauſe of Reſeiſure given unto him.*

IN a Writ of right in ancient demeſne, the Tenant pleaded a Leaſe of the King for life, the Title was found for the Demandant, and alſo the Leaſe found accordingly, for which the Eſcheator ſeiſed the Land, the Demandant upon his Petition ſhall have a writ to deliver ſeiſin, to hold of the King by the ancient ſervice, according to the Cuſtome of the Mannor, 46 *E.*3. *Petition* 20.

If the King grant Land whereof a ſtranger hath ſervices due, the grant ſhall be to hold of the cheif Lords, &c. otherwiſe upon a Petition the land ſhall be reſeiſed, and the Patent repealed, 46 *E* 3. *Petition* 18 19. *vi.* 17 *E* 3 59.

See 23 H.6 7. The ground taken by *Priſot*, where the King hath Land by forfeiture, as Treaſon or for Mortmain, and the grants are *Tenend. de capitalibus Dominis, &c.* they ſhall be holden as they were before. So it is ſaid, 46 *E*:3. *Petition* 18. That when he doth not give it accordingly, it is no lawfull Patent, becauſe it is a wrong to the mean Lord.

IX. *Where the Grant of the King to one and his men ſhall be good, and which ſhall be ſaid his men.*

IF the King grant to me, that I and my men ſhall be quit of Toll, the the ſame Grant ſhall extend to me, my men, Villains, and Homagers, by *Paſton* and *June*, 14 *H*: 6. 12. and that they ſaid upon a Grant at this day.

But ſee 40 *Aſſ.* 21. Where it was awarded, that a Prior could not have the goods of his Tenants Fugitives by Charter of Grant of ſuch goods, *de hominibus ſuis*, if the Charter had not been granted before time of memory, and executed by uſage to have the goods of his Tenants, *&c.* otherwiſe he ſhould not have, but only of his Villains there.

But ſee, 33 *E.*3. *Grants* 88. That a Grant to me and my men ſhall extend to Villains and Homagers, by *Wilby* and *Schard*, and 12 *E*:3. *Conuſans* 18. it is only of Homagers, by *Schard*, and *Hill*, and not to Villains; As if the King take me and my men into his protection, it ſhall not extent to Villains: But *Parn.* and *Trew.* ſay there, that it doth extend to Villains alſo.

X. *Where the Grant of the King ſhall be good, becauſe he may by poſſibility have the thing granted, and where it is good of a thing which he cannot have, &c. and where not.*

THe King grants to one to be diſcharged of Fifteens and Tenths, *&c.* to be granted, this is good to a ſpirituall man, or a temporall, for the certain expectancy. 19 H. 6. 62. 21 *E.* 4. 48. So a grant to me that my Heir may enter without ſuing Livery, or that I ſhall not be puniſhed in a *Ceſſavit*, for a Ceſſer to come, all is good, 19 H. 6. *ibid.*

See 33 H. 8. *Dyer* 52. The King may diſpence with things to come, in which he hath an Inheritance, as Subſidies, *&c. vi.* 6 H. 7. 5. *acc.*

So the King grants to me twenty pounds to take of the Collector of the next Fifteens, this is good by *Choke*, 21 *E.* 4. 48.

So a Grant to be diſcharged of Collection of Tenths and Fifteens, 20 H. 6. 12. 21 E. 4. 48. See 30 H. 6. *Grants* 1. If the King grant to me the Ward of the Heir of *I. S.* when he dieth, *&c.* the ſame is not good, but if he grant to me the Temporalties of the Biſhop of *S.* the Biſhop being now alive, this is a good Grant. So the grant of Goods of one indicted of Felony after that he is outlawed, for it is ſaid, the King is ſeiſed of them in Law, and of Iſſues, Amerciaments, and Goods of Fugitives, *&c.* But if he grant the Eſcheat of his very Tenant, or the land which his Villain ſhall purchaſe, this is void by *Vampage*, 30 H. 6. 21 E. 4. 46. by *Keble*, *vi.* 8 *Eliz: Dyer* 252, Sir *William Cordalls* caſe, *ac. C.* 1. *part* 5*c. ac.* 2 *Mar. Dyer* 108. *ac.* 2 *Eliz: Dyer* 278.

The King granted to the Mayor and Bayliffs of *Lynn*, that they ſhould be Toll-free throughout all *England*, and if any took Toll of them, that they might take as much, *&c*, within their Juriſdiction in *Withernam*, *&c.* it was a good Grant, H. 8. *R.* 2. *Grants* 105.

The king cannot grant ſome things which himſelf may have, as he cannot grant to a Corporation to take advantage of the old ſtatute of Foreſtalers, for the wrong done to their City, but the ſame ſhall be determined in Eyre, *M.* 3 E. 2. Action upon the Statute 26.

So of all things touching his Prerogative, as he cannot grant to his Tenant that he ſhall not hold of him, *&c.* 8 H. 7. 12.

The king grants to me that I ſhall not levy a Fine upon a Concord, or that I ſhall not be impeached of the next Recognition which I ſhall make him, or that I ſhall have the next Recogniſance made to him in the Chancery, this it a good Grant; by *Hoddy*, 19 H. 6. 64.

XI. *Where*

XI. *Where the Grant of the King made of Tythes to a Common, or ſpirituall perſon is good.*

THe king grants the Tythes of the new Aſſets, in a Forreſt to one *P.* and the Grant good; And the king ſhall have the Tythes of the places out of any Pariſh, for to grant them to whom he pleaſeth, and not the Biſhop, 22 *Aſſ.* 75. But the opinion of *Herle*, 7 E. 3. 5. that the Biſhop of the place ſhall have them.

See 38 E. 3. 6. and 42 E. 3. 22. That Tythes by being granted to a common perſon, are become temporall; And alſo that the right of Tythes is not gone by unity of poſſeſſion of the land out of which, *&c.* in the perſon, and Feoffment over, 42 E. 3. 12. *vi. C.* 11. *part in Priddle and Nappes caſe.*

XII. *Where a grant of Liberties and Franchiſes, which I, or my Heires have purchaſed, or ſhall purchaſe, is good, and to have Leets of all Reſiants: And where void for the incertainty.*

THe king granted to the Mayor and Bayliffs of *Lancaſter*, that they ſhould have all the Franchiſes and Liberties, which the Burgeſſes of *Northampton* had, and becauſe the Charter did not expreſſe the certainty of the Franchiſes; and it was not ſhewed upon Record what Franchiſes *Northampton* had, the Charter was diſſallowed in a *Quo Warranto*, 20 E. 3. 29. *Avowry* 129. *C.* 9. *part*, the Abbot of *Strata Marcellas* caſe.

The king granted a Leet of all the Tenants and Reſiants in *W.* where he had leaſed the ſame Town to a ſtranger for life before, and granted him a Leet: And *Thorp* ſaid, That the ſecond Grant is void but during the life of the Termor. And *Green* ſaith, Where the firſt Grantee hath Seiſin of the Coming of the Reſiants, where his Grant is void or determined, yet the ſecond Patentee ought to ſue to repeal his Charter, or otherwiſe the Reſiants are not diſcharged of their Suit, 32 E. 3. *Avowry* 112. and 7 E 4. 11.

A Grant of a Privilege or Liberty *in omnibus terris ſuis*, extends only to the Lands which the Grantee hath at the time, but if the Grant go further, or in all lands which he or his Heirs ſhall after purchaſe, it is good for them alſo, *&c.* 38 H. 6. 10. the like liberty granted for their Goods, 19 *H.* 6. 62.

A Patent of King *Henry* the fifth, bare date at *Burdeaux* in *France*, adjudged good, 38 *H.* 6. 34. But ſee, it was confirmed by the King and Parliament.

XIII. *Where the Grant of the King of the Lands of Priors Aliens in Fee, is Fee-ſimple.*

THe King granted to the Earl of *S.* in the time of War, the Advowſon of a Priory, with Fees and Advowſons, *&c.* And his Heir brought a *Quare Impedit* againſt the Succeſſor of a Church now void, who alledged Plenarty. It was debated, if that were a plea againſt him who claimed by the King, 29 *E.*3.2. *Quare Impedit* 189.

See 13 *H.*4.13. Where a Prior Alien being Committee of his Priory in the time of War had aide of the King in a Writ of Right (that was not as is conceived, for the Fifteens of his Eſtate, for then that Writ did not lye againſt him. So *quere* of the Grant in Fee in the firſt caſe) See for the intereſt of the King by ſuch Seiſure, 17 *E.*3.2.46 *E.*63.

XIV *Where the King grants a Reverſion, it paſſeth from him by the name of Reverſion.*

THe King leaſeth a Mannor for life, and after reciting that leaſe, grants to a ſtranger, that the ſame Mannor, *&c.* after the death, *&c.* ſhall remain to him, *&c.* this is good. Alſo it had been good if he had granted him the Reverſion by expreſſe words, 38 H:6.34.

The King cannot grant the Reverſion of an Office which another holdeth for life, by name of Reverſion, for he hath no ſuch Reverſion, but he may grant ſuch Office by a ſpeciall recitall of the particular Eſtate, 3 H:7.15. 8 H:7.12.

The King may grant the Reverſion of Tenant in tail without Attornment, 12 E.4.3.

XV. *Where the Grant of the King which was void ſhall be made good by Confirmation of Parliament, and where by the Kings Confirmation.*

A Man makes a Leaſe for yeers, and is attainted, being beyond Sea at the time of the Judgment. the King granted the Reverſion to a ſtranger, and the Tenant attorned, and afterwards the King by his Charter did reſtore him according to Law, and granted that he ſhould have his Lands and Tenements back again, *&c.* And this Charter was confirmed in the Parliament, and he granted the ſame Reverſion to a ſtranger by Fine, who brought a *Quid juris clamat* againſt the Tenant, and he was driven to attorn without warning given to the Grantee of the king, for although

although the Attainder was good, and the Charter of the king but as a Pardon, and his Grant of the Reverſion perfect before, yet by a ſpeciall Confirmation of the Parliament, this was a good reſtitution of the land, *&c.* 29 *E*:3. 32. *Grants* 100.

See where the king doth confirm a void Grant of Cogniſans made by the Queen and Prince: And further granted the ſame thing, *&c.* it was good by way of Grant, although the Confirmation was worth nothing, 44 E:3. 17. So was it admitted in the caſe, 20 E:3. *Conuſans* 46. Of Confirmation of the King. See 11 E. 4. 1. 39 E:3 12.

XVI. *Where the King ſhall grant a thing in Action, or his Debt to another.*

THe king may well grant a thing in Action, and the Action where it is of a thing certain, as Debt, but not Treſpaſſe, *&c.* 5 E. 4. 10.

One Obligee being outlawed, the king ſhall have the whole Obligation; And if he grant the ſame to a ſtranger, and to ſue the ſame in the kings name, all is good, 19 H. 6. 47. and ſee 2 H: 7. 8, 9, and 10. where the king may grant a thing in Action.

XVII. *Where the King grants Liberty within all his Fees is good, and what ſhall be ſaid his Fee.*

THe king granted to one Eſtray within all his Fees, it was holden by *Needham* and *Littleton*, that the ſame did extend unto Lands holden in *Frankalmoigne*, for that is his Fee, becauſe a Writ of Meſne; and not *Injuſte vexes* lyeth againſt him: Alſo the Feoffee of the Abbot ſhall hold of the Donor; Alſo he ſhall have Eſcheat by determination of the houſe, or the death of all the Monks, which *Choke* granted, 7 E:4. 11.

XVIII. *Where the Grant of the King to a Monk, or a dead perſon in Law, is good.*

THe king may well grant land to Farm to a Monk, and by the Grant he is enabled to have an action for his Farm, but that is only in the Court where he is charged, *viz.* in the Exchequer, by *Quo minus*, *&c.* 2 *H*: 4. 8. 8 *H*. 5, 6. 7 E. 4: 28. But a Leaſe made to him by the king for life, is void, 14 H: 4. 10.

So if he grant to him a Farm, *Abſque aliquo reddendo*, it is void, 7 E. 4. 29.

If

If the king grant to an Abbot and his Succeſſors, that the Monks ſhall have the Temporalties during the Vacation, *&c.* they ſhall preſent to an Advowſon which becomes void in the time of Vacation, 39 *E.*3.21. *F.N.B.*33 *c.*

XIX. *Where the Grant of the King to a body which is not Corporate, nor hath capacity, is good, and where the Grant ſhall give capacity: So of the Grant of a man who hath not capacity.*

IF the King give Lands in Fee-farm, *Probis hominibus de villa de D.* this is a good confirmation: So where it is *omnibus Burgenſibus & Communitati*: And by ſuch like names of Corporation, they ſhall have an Action touching their Farm. And ſee there, that one of the Commonalty cannot juſtifie the taking of a rent due to the Commonalty, becauſe all is one entire body, 7 *E.*4.14. And ſee that ſuch a Grant ſhould be void, if it were not for the rent reſerved, 7 *E.*4.28.

The King grants *Civibus & Communitati* of *N.* certain Liberties, and afterwards ſaith, *Et ulterius concedimus civibus praedict. civitatis, quod non compellantur jurare, &c.* and it was holden that every Citizen by himſelf might plead it, and that it is a good Grant, yet not according to the Corporation, 21 *E.*4.56.

And there by *Choke* and *Brian*, If the King grant to me licence to make a Chauntery and to give unto a Prieſt, *&c.* to ſuch a value, *&c.* and I do accordingly, this is a good Corporation without more words, and without reſerving any thing, ſee 2 *H.*7.13. *acc.*

See 9 E.4.6. *Baggots Aſſiſe*, where it is holden, that the Grant of the King to an Alien who is no Denizen, is not ſufficient for him to hold an Office without eſpeciall word of Legitimation: For which cauſe *Bagot* pleaded the Charters of King *Hen. 6.* of a Grant of Legitimation, and good, notwithſtanding the generall Act of Repeal, *An.*1 *E.*4. of all Acts of the three *Henries*.

See 29 E.3.21. Where the King granted unto the Monks the diſpoſition of the poſſeſſion of the Abby in the time of War, the Abbot being an Alien; Or otherwiſe in time of Vacation.

If the King grants Lands to the Monks of *Weſtminſter*. *Nele* ſaith, that the Abbot ſhall take advantage of ſuch Grant, 21 E.4.58. *vi.* 49 *E.*3.4.

The King granteth to his Tenants of *D.* that they ſhall be diſcharged of Toll, this is a good Grant, 21 E.4.58.

XX. *Where*

XX. *Where the Grant of the King of offices is good, and where there ought to be the word* conſtituimus, *and where a Grant of offices to the King is good, and where the Grantee may make Aſſignee or Deputie.*

IF the King grant to me the Office &c. *cum feodo*, where there was no ſuch Office before, this is a void Grant, if it hath not theſe words *conſtituimus &c.* to make the Office &c. 8 *E.*4 6. *vide* 13 *H.*4.17.

But if the King grant me ſuch office, *precipiend pro illo* 20 l. this is good, although there was no ſuch Office before, otherwiſe where he grants it *cum feodo & vad. ſp. tant.* for there needs the word *Conſtituimus* &c. 9 *E.*4.11.

A man grants the office of a Forreſter unto the King, the ſame is good, for although the *King* cannot be an officer, yet he may grant it over, 1 *H*7 29.

Note, That the *King* cannot grant an Office which another hath for his life, without ſpeciall recitall of it, for it was ſayd, the Office is not in him, ſo no reverſion can be of it, 3 H.7.15. 8 H 7.12. 11 *E.* 41.

Note the *King* cannot grant the Office of Juſtice, or of the Aſſiſtants to it, as the Clark of the Crown, *&c.* to him who hath not knowledge to exerciſe the office, 9 *E.*4 6.12. alſo the King cannot grant that Office to 2. which of neceſſity is to be uſed by one onely, as the Office of *Preignotorie &c.* 18 *E.*4.7. *vide* 9 *E.*4 6. 2 *Eliz. Dyer* 175. *Scroggs* Caſe, *C.*4. *part*, *Mittons* Caſe *acc. Vide* 39 *H.*6.48. 1 H 7.29. 9 *Eliz. Dyer* 259.

The grantee of the King of an Office of truſt, cannot make an aſſignee without a ſpeciall Grant thereof in his Patent, 33 H. 6. 34. 11 *E.*4 1. that he ſhall not make a deputy without words to do it, *vide* 9 H 6 31. of the Grant of an Office by the King, 13 H.4.17. 22 H. 6. 9. 2 H.7:6. and ſee 22 H.6. 10. That it ought to appear in the Patent of the King of an Office by expreſſe words, or recitall or neceſſary intendment, that there hath been ſuch an Office before &c. *Vi. C.* 11. *part* 4. in *Auditor Curles* Caſe *Vi. C.* 8 *part*, the Earl of *Rutlands* Caſe.

XXI. *Where the Grant of the King to a body Politick, by another name then their Corporation is good, and where by his Grant the name of the Corporation ſhall be changed.*

NOte, a Patent made to a Mayor, Aldermen and Bayliffs, not ſpeaking of the Commonalty is good, for the Mayor is the head, and the others make the Commonalty. So of a Patent to the Mayor and Citizens: But if he were not Mayor at the time, it is void, 13 E.3.4.8.

See 21 *E.*4.56. Where the King granted *Civibus & Communitati de N.* and afterwards in the ſame Patent ſaid, *Et ulterius concedimus Civibus prædictæ civitatis, quod non cogantur jurare, &c.* and this was good, yet it did not agree with the Corporation.

The King may grant to the Mayor, that he ſhall not be impleaded by another name, then he is incorporate, 11 *H.*7.27.

XXII. *Where the King ought to grant to hold of the chief Lord, and what Tenure it ſhall be when the King expreſſeth none in his Grant, and where he grants to hold by the ſame Services, as ſuch a one held.*

THe King granted a Fee-farm to *I.* and afterwards did releaſe to him in Fee, to hold by the Services due: And this was adjudged a Tenure in Knights-ſervice, becauſe it was for the moſt advantage of the King, 44 *E.*3.45.

Finch. ſaith, That if the King purchaſe the Lands holden of others, and grants the ſame without expreſſing any Tenure, they ſhall be holden in chief. So where Lands come to him by Forfeiture of War, as Lands in *Normandy*, or otherwiſe by reaſon of his perſon: But if an Honour be ſeiſed into his hands; now if a Mannor holden of the Honour do eſcheat unto him by a common Eſcheat, and he grant the ſame as before, it ſhall be holden of the Honour as it was before, 47 *E.* 3. 21. But in the two firſt Caſes, *Fitzh.* thinks that the Rent is extinct, *Eſcheat* 1.

If the King grant lands, *Sine aliquo inde reddendo*, the grantee ſhall hold in cheif for the non-certainty, for that is the beſt for the King, 33 *H.*6.7.

But *Priſot* there ſaith, That if the King grant land eſcheated unto him by forfeiture of Treaſon, and grant it over, *Tenend, de capitalibus Dominis*, this is good and ſhall be holden accordingly, 33 *H.*6-7. and ſee 46 *E.*3, *Petitions* 18. and 20. That where the mean Seigniory is ſuſpended only by the ſeiſin of the King; and he granteth the Land over, if it be not *Tenendum de capitalibus dominis*, the Patent ſhall be repealed. So if the King purchaſe lands by Covin of a dead perſon, and grant it to him, the Patent ſhall be repealed upon a Petition made by the mean Lord.

The King granted the Lands of the Templers diſſolved, which were holden of him in Frankalmoigne, to the Hoſpitalers of Saint *Johns* of *Jeruſalem*, to hold of him by the ſame Services, *&c.* yet the Frankalmoigne was not revived by *Priſot*, becauſe no certain Service, 35 H. 6.56.

XXIII. *Where*

XXIII. *Where the Grant of the King ſhall be voyd for cauſe of recitall, and where the Recitall ſhall make the Grant good, and where it ſhall be void by cauſe of falſe ſuggeſtion.*

Note by *Huſſy*, where the recitall of the grant of the King is upon matter of record, if it be falſe the grant is void, whether it be *ex mero motu*, or *ex rogatu*, *&c.* becauſe the Grantee hath given him ſuch a Mannor, or made to him ſuch a Recognizance, or confeſſed ſuch an action, *&c.* 21 *E.* 4. 48. 16 H 8 1. *Per Finch. Plow. Com.* 455. *b*

Note, where the King makes a Grant upon the Information and Suggeſtion of the party of a Surrender of a former Leaſe, and there is no ſuch Leaſe, the Leaſe being falſely recited in the date, as a Leaſe dated, 32 H. 8. where in truth the Leaſe was 33 H. 8. there the Grant is void, as it was holden *Trin.* 21. *Jacobi.* in the Kings Bench, is the Lord *Zouch* and *Moores* caſe.

Trin 9 *Jacobi*, *Roper and Rodens* caſe, King *Henry* the eighth, reciting by his Grant, That where he had a reverſion upon a deviſe made to *M.* whereas it was made to *N.* he granted the Reverſion to *Roden*, It was adjudged that the recitall was not helped by the Statute of 34 *H.* 8. for the Statute doth not help falſe Recitalls, but miſ-recitalls, and in this caſe there was a miſtake in the thing it ſelfe.

See 3 *Eliz. Dyer* 195. *Kemps caſe*, Where the King was miſtaken in the date of the grant of an office, and granted the Office to another, the grant was adjudged void:

Vi. 38 *H.* 6 37. by *Danby*, If the miſ-recitall be in a thing not materiall, and which indeed not to be recited, it doth not hurt the Kings Grant. *vi:* 31 *H.* 8. *Br: part* 101: *ac.*

Otherwiſe it is where the recitall is but matter of fact, as for ſervice done, or becauſe I am poor, *&c.* 21 *E.* 4 48. So 29 *E.* 3. 32. A Charter of reſtitution of a man attainted, reciting thereby that he was out of the Realm at the time of the Judgment, and for benefits by him done to the King, this is a void recitall, and the grant good.

So 9 *Ed.* 4. 12. A Charter of legitimation to *B.* reciting that he was a *Norman*, the Charter is good, although he was a Frenchman, and the recitall void, Avowry for Amerciament in a Leet, upon a reſiant, he alledged the grant of the King within the town, *&c.* the Plaintiff ſaid, that at the time of the grant, the King had let the town to *S.* for life, who had the Leet there, *&c.* Yet *Thorpe* ſaid, That after the death of *S.* that the grantee ſhall have advantage of the grant, and afterwards, the Plaintiff was non ſuit, 32 *E.* 3. *Avowry* 112. The King granted certain advowſons to the Earl of *S.* being within age, untill he came to his full age, reciting how hee had granted the ſame to his father before, and although the ſaid recitall were falſe, Yet *Green* Juſtice held the grant good.

and it was pleaded over for the King, 29 *Edw.* 3. 10. *Quare impedit* 190.

But ſee, the words of recitall came after the grant, as hee granted the Advowſons, *&c.* which his Father before had, whereas in truth his grant did not extend to them: See the grant.

The King granted to a Prior to appropriate Advowſons, which in truth were holden of the King, and that not recited in the Charter, and therfore it was holden a void licenſe, and iſſue was taken if they were holden of the King, 29 *E.* 3. *Grants* 58. *vi.* 41 *Aſſ* 19

See 2 *H.* 7. 13 A licenſe to give a Rent *Cuidam capellano*, where there was no ſuch &c. It was held good to diſpence with the Statute of *Mortmain*, and to expreſs the intent of the King, by recitall of the Statute, *de Religioſis*.

Note, If the King grant an Office *&c.* upon a falſe ſuggeſtion to him made, the grant, is void, 37 *H.* 6. 27. So where the Suggeſtion is of a leſſer value or of another title, or that he had it by the forfeiture of *I. S.* which is falſe. 8 *H* 7. 3. And ſee 38 *Aſſ* 22. That the recitall in the Grant ſhall never conclude the King.

XXIV *Where the Grant of the King hath two Intendments, which ſhall be taken, and which not.*

NOte, It is ſaid, Where the grant of the *King* may be taken to two Intents, it ſhall be taken the beſt for the King, but where it may be taken good to one intent, and void to another, it ſhall be taken to that intent which is good by all the Juſtices, in the Abbot of *Walthams* caſe to be diſcharged of the collection of Tenths, *Per Clerum Anglia*, 21 *Ed* 4. 45 *vi* 2 *R.* 3. 4.

See 2 *H* 7. 6. That ſpeciall things ſhall not paſs by generall grant, where there are other generall things which paſſe thereby by common intendment, as a grant to be Sheriff *&c.* without rendring an account, he ſhall be charged with green wax, and the grantee of all amerciaments of his Tenants ſhall not have royall amerciaments; and ſee the caſes of Tenures before, where the Charter is generall without ſpeaking of Tenure, or where it is to hold by Services, dues, it is *Knights* ſervice in each caſe, 44 *E.* 3. 45. and 47 *E.* 3. 21.

Pardon of all demands ſhal take away no right of inheritance which the *King* hath, 6 H 7. 15.

The *King* ſeiſed the Temporalties of a Priory for a contempt, for refuſing the *Kings* Varlet to a Corody, where it was found by verdict, that the houſe was of the *Kings* foundation, a Church became void, and afterwards the *King* pardoned him all occupations, Intruſions, Contempts and Injuries, and made him reſtitution as entirely, as he or any of his predeceſſor

deceſſors held. yet in that caſe it was adjudged, that the *King* ſhould have the Preſentment, 46 *E* 3 *Grants* 50.

But ſee 9 *Edw.* 3. 26. If the reſtitution had ſpeciall words, *viz.* ſo as he could not claim any thing by that ſeiſin, the preſentation had alſo paſſed.

A generall licenſe to appropriate a Church which is holden immediatly of the *King* in cheif, the ſame not being expreſſed in the Charter, is void, and iſſue was taken upon the Tenure, 19 *E* 3 *grants* 58. *Knivet* held the contrary, 41 *Aſſ.* 19. the grant *ex ſpeciali gratia*, all was void, if it be not according to the *Kings* intent.

Note, The Maſter of Saint *Leonards* could not have the goods of a man attainted of any Treaſon touching the perſon of the King, nor of him who had killed the Kings Meſſenger, by a Charter which granted to him and his Succeſſors, *Catalla omnium tenentium ſuorum felonum & fugitivorum qualitercunque damnatorum*; But it was ſaid, that the grant did extend to Petit Treaſon, &c. 22 *Aſſ.* 19, See 8 *H* 4 2. a man put to penance.

Note by this Caſe, That of Treaſon touching the perſon of the King, a man ſhall forfeit all his goods and lands alſo holden of others, but of other Treaſons, hee ſhall forfeit but his goods and lands holden of the King.

The King being ſeiſed of the Honour of *P.* with the forreſt appendant granted the Bayliwick of the Forreſt to one in fee, rendring rent, and afterwards gave the Honour to another in taile, and agreed that the Donee ſhould not have the Bayliwick, no not after the death or forfeiture of the Grantee, becauſe it was a thing ſevered by the grant of the King, *Secus eſt*, &c. If the King had alienod parcell of the thing appendant to the honour to hold of him, ſee the caſe 26 *Aſſ* 60.

The Abbot of *W* ſhewed Charters for his Sanctuary, which were *quod quiſque fugitivus de quolibet loco, de quacunque cauſa*, &c. *& cujuſcunque conditionis fuerit*, &c: *qui ipſum locum*, &c. *intraverit membrum*, &c. *& vitæ impunitatem conſequatur*, &c. and another, *Quicunque intraverint* &c. *pro quacunque cauſa munione eccleſiæ gaudent.* And it was agreed by all the Juſtices, That theſe Charters did not extend, but to felony, 29 *Aſſ.* 34. *vi.* 1 *H* 7 26.

The King granted to his ſon the Dutchy of *C. Cum omnibus ad eum ſpectantibus, ſimiliter cum Wardis, maritag. &c. & ſimiliter alibi extra Com. prædict non obſtante Prerogativa Regis*, &c. yet it was adjudged that he ſhould not have the Wardſhip of him who held land of him in the County in cheif, or other land holden of one who held of him who was in Ward of the King. by reaſon of Wardſhip, for it was holden, that ſuch Wardſhip the King ſhould have before the Prerogative, and the ſame is not expreſſed in the Charter. Alſo it is not ſpoken in the Charter of thoſe who held of the King by many meſnes, as it is here, and of things touching the Crown, the King ſhall not be put out without expreſs mention of them in the grant, 43 *Aſſ* 15:

Vide 11 *Eliz. Dyer* 283. *contrary in caſe of a common perſon. vide* 13. *Eliz. Dyer* 300.

If the King be ſeiſed of an Advowſon which is void, and he grants the ſame to a ſtranger in fee, the Preſentment alſo ſhall paſſe, becauſe there is no other profit of Advowſon, which ſhall not where he grants Land and Advowſon &c as an Advowſon which is void, the Temporalties being in the Kings hands &c and he reſtored them to the Biſhop &c. 9 *E.* 3. 26. *Preſentment* 5 *F.N.B.* 33. *N.*

The King granted to the Earl of *S. Omnes Advocationes quæ pertinent ad prærogat. de* M. *et quas nuper* [illegible] *conceſſimus præfato Comiti*, the Father, to whom in truth he granted none, yet it was adjudged that this Grant was good for the Advowſons of the Priory, for otherwiſe it ſhould be void in all, 29 *E.* 3. 7.

A Grant of Conuſance of all Pleas, is no warrant to levy a Fine, 44 *E.* 3. 29: the ſame Law of Aſſiſe &c 12 *E.* 3. *Conuſance* 81.

M. 37. *Aſſ.* 6. Conuſance was granted to the Bailiffs of *Beverley* in Aſſiſe by Grant of the King to the Provoſt, to have *Curiam ſuam*, and that was intended of his own Court, and to be holden by their Steward, or Bailiff at their Election.

See 6 *E.* 3. 51. where the King granted to the Biſhop of *E. Priſas ſuas* &c.

XXV. *Where the Kings grant ſhall enure to two intents.*

A Grant made to a perſon which is dead in Law, ſhall give to him a capacity to take and exerciſe a thing, which is for the advantage of the King, as a Farm to a Monk, 2 H. 4. 8 8 H. 5. 6. 7 *E.* 4. 28 14 H. 4. 10.

Vide Br. Patents 83. *Br. Corporation ac.* So grants to a Body not incorporate, *vid.* 7 *E.* 4. 14.

A pardon of the King to the principall ſhall alſo excuſe the Surety, where it is of a thing which is a duty before the forfeiture, as Debt &c. 1 H. 7. 10.

Brian ſaith, that if a man grant *hominibus de* [illegible]. to be diſcharged of Toll, now they are incorporate, as to that, 21 *E.* 4. 56.

See 5 *E.* 4. 42. Where the Confirmation of the King of a Grant of an annuity by a Biſhop, ſhall enure alſo to confirm the Rent, which is but rehearſed in the Grant of the Biſhop to be due before.

Note, that the Grant of the King ſhall not enure to two intents for the advantage of the Grantee, where it doth not appear that the King was well appriſed of his Grant, as a Grant to him who is an alien, or attainted. 7 *E.* 4. 28 8 H. 5. 2 A pardon doth not diſcharge a Fine &c.

By what words of Grant for ſhipping of Wools &c. the Cuſtomer ſhall be alſo diſcharged of the Cuſtome not taken &c. See 1 H. 7. 2.

XXVI. *Where*

XXVI. *Where the grant of the King shall be good, the thing being misnamed*

CHoke saith, If the King pardon the indicted of Treason, by the name of *W. C.* where his name is *W. T.* yet if the Charter be *ex mero motu*, he shall be helped by speciall pleading, *Brian* denied it, because the King was deceived in the misnaming of him, 21 *E* 448.

Where the King grants &c. *Civibus & communnitati de N.* &c. *et ulterius concedimus civibus prædict. civitatis*, this is good, although the Corporation be misnamed, for all doth depend upon the first words, 21 *E.* 456.

XXVII. *Where the Grant of the King is good against a Statute, without a* Non obstante, *and where it ought to be expressed.*

IT is said, that the Grant of the King with this clause, *Non obstante* &c is good, of the Office of Sheriff for life, or otherwise against the form of the Statute of 23 H:6: *cap* 8. the words of the Statute are, that the Patents shall be void, any clause or word, *Non obstante*, put or to be put &c: notwithstanding, so the Parliament cannot bind the King, nor take away his Prerogative: See divers Cases put by *Rock*, 2 H:7:6.

Vide 33 H.8. Dyer 52. *The Queen granted a Licence to transport Bell-metall, non obstante aliquo Statuto.*

See also 2 *R.*3.12. That the Licence of the King with a *Non obstante* &c. is good against every penall Statute, even against the expresse words of the Statute.

XXVIII. *Where the Grant of the King shall be good without the confirmation of other Kings, and where not.*

NOte, it is holden by the Justices, that the Grant of King *Edward* the fourth of any Office which is not Judiciall, as Parkership &c is good without any Confirmation, and so of Franchises, and the like by him granted, but otherwise it is of Offices which are Judiciall, for those were void by his death, 1 *R.*3.

XXIX. *Where*

XXIX. Where a thing appendant or regardant ſhall paſſe by the Grant of the Principall, where not.

NOte, where the King grants a thing, that all other things which are parcell or incident to it ſhall paſſe alſo, without expreſſe mention made of them, as if the King grant a Hundred, the Leet alſo which is parcell of it, ſhall paſſe, without ſpeaking of it, 8 H.7.4.

So of things appendant time out of mind &c. where the King reſerves a Rent or Farm, as a Leet which hath been appendant time out of mind to a Hundred, and he grants the Hundred reſerving Rent, the Leet doth paſſe, 18 H 6.11. *vide* 8 H.4.4. by *Brian*, *Davers*, *Townſend*.

So where he grants a Town to which a Leet is appendant *cum pertinentiis*, rendring Rent, the Leet ſhall paſſe, 18 H.6.11.

Vide Stanford 43. *and* 25. *acc.* Alſo before the Statute of *Prerogativa Regis*, an Advowſon did paſſe by the Grant of the King of the Mannor, to which &c. without the words, *cum pertinentiis*, 43 *E*:3.22: 18 *E*:3:15: 1 H:4: 5.

Alſo *Thorp* ſaith, that if the King grant a Mannour which he hath by Eſcheat, or by purchaſe, as entirely as ſuch an one held it &c. the Advowſon ſhall paſſe, for the ſpeciall rehearſall doth declare his intent, and that he takes notice of it, and that was agreed by the Court, in 43 *E*.3.22.

31 H.6.20. 14 H.6.11. *acc.*

The King granted the Bailiwick of a Foreſt appendant to the Honour of H. in Fee, rendring Rent, and afterwards he granted the Honor with the appurtenances to another in tail, and adjudged that the rent did not paſſe, but if he had granted parcell of the Foreſt, or of any thing appendant to the Honour to hold of him &c. the Seignorie had paſſed, 26 *Aſſ* 60.

See 5 *E*.3 by *Herle*, took a difference, where the King makes reſtitution upon the ſame Proceſſe, whereof the Seiſure was (*i*) to him in whom the Right was, and according to the Seiſure, and when he makes reſtitution in their Right, but to another, or in another manner, as to Tenant in Dower, or to one upon Partition, or to the heir yet within age, for in thoſe Caſes Advowſons do not paſſe without expreſſe mention made.

So of reſtitution to him whoſe Lands were ſeiſed becauſe a Prior alien, whereas in truth he was born in *Gaſcoigne*, ſuch a generall reſtitution doth ſerve for an Advowſon, 27 *Aſſ*.48.

So of a generall Liverie to the next heir after the death of an Ideot, and there, although the Advowſon was not appendant, if it were ſeiſed, 16 *E*. 3 *Liverie* 30. otherwiſe it is, if it were never ſeiſed, 44 *E*.3.25.

The King ſeiſed Lands holden of him, after the death of him who held but for life, which was found accordingly, and he removed his hands, and ſent to the Eſcheator to deliver them to him in the Reverſion, with the iſſues, yet it was adjudged that the Preſentment which the King made to an Advowſon appendant, mean between the ſeiſure and reſtitution, ſhould

ſtand

ſtand, becauſe there were no ſpeciall words of it, 24 E.3. 7. *Quare Impedit* 10 But ſee that it paſſeth with ſpeciall words in ſuch caſe, 9 E. 3. 26. *Vi* 18 E:3.21.*ac.*6 *E.2.Preſentment* 9.27 *&* 3.8 *ac.*

Note, that land appendant to an Office, as Warden of the Fleet, or to a Corody, ſhall paſſe by Grant of the King of the Office, or of the Corody, 1 H 7 29. 8 H 7.4.

Note if the King grant to me the Patronage of a Priory, *&c.* I ſhal have alſo the Corody, without ſpeaking of it, becauſe it is incident to the Patronage, and cannot remain to the King if it be not reſerved ſpecially, 26 *Aſſ* 53 1 H:4,5.

So if the King grant to me a Caſtle, the Caſtle-ward and ſervice to repair it ſhall paſſe without mentioning of them. 17 E:3.65.

Note by *Thorp*, If the King purchaſe a Mannor to which Franchiſes Realls are regardant, and afterwards grants it over *cum libertatibus, &c.* yet the Franchiſes ſhall not paſſe, if he do not ſay, *cum libertatibus* at the time when the Mannor was in the hands of the Feoffor of the King, 43 *Aſſ* 1 *C 9 part*, in the Caſe of the Abbot of *Strata Marcella.*

See 1 *H.*4,5. by *Gaſcoigne*, That a thing incident ſhall paſſe from the King by a genrall Grant of the principall: As Common appendant with the land, and a Corody with the Patronage; A Court of Pypowder with a Faire, by *Tirwith*: A Court Baron by the Grant of the Mannor, 8 H:7.3. It ſhall alſo paſſe by the Grant of the Hundred, 8 H.7 4 And Homage by the Grant of Eſcuage; And if the King grant a Fee, or an Honour, all Mannors and Lands which were parcell of them, paſſe by the generall words, 5 E:3 65 6 H:7. 14.

XXX. *Where the Grant of the King is good to make a Corporation.*

Brian and *Choke* ſay, That the King may make a Corporation without ſpeciall words to implead, or to be impleaded: and without reſerving any thing to himſelf: As if he give me licence to make a Chauntry for a Prieſt, to ſay, or ſing in ſuch a place, and to give him land to ſuch a value, if I make it accordingly, it is a good Corporation, 21 E:4. 56. 2 H:7. 13. But where any thing as a Farm or Rent is reſerved to the King, every manner of Grant ſhall make a Corporation, as a Grant *Probis hominibus de Iſlington, &c* 7 E: 4.14 *&* 28. 21 E:4.58 *acc.*

A Charter of Franchiſes to the Burgeſſes of *W:* good, to make them a Corporation, 16 E.3. 53.

The King granteth a Prebendary to one and his Succeſſors, yet the Patronage doth remain in him, for he cannot be Patron of himſelf, ſo he ſhall not have a Corporation to do a thing to himſelf, 17 E:3.39.7 E:3.4. 8 E.3.45.

XXXI. *Where the Grant of the King to hold plea before the Steward, &c. gives him authority to make Juſtices,* &c.

NOte *per Curiam*, If the King grant to me to hold all manner of Pleas before my Bayliffs, Steward, or Juſtices, although I had none before, yet I may well make them by this Grant, 7H 4,5. *acc.*

XXXII. *Where the Grant of the King to pardon an Offence before it be done, is good.*

THe King grants to the Biſhop of *S.* that he and his Succeſſors ſhall be acquitted from all Eſcapes of Theeves and Felons, and of Eſcape of Priſoners out of their Priſon, this is good for negligent Eſcapes, but not voluntary, 3 H:7.15.

The King granted to the Citizens of *London*, that no Battell ſhall be againſt them, 20 E:3 *Corone* 125

The King granted to the Mayor and Bayliff of *Lynn*, that they ſhould be Toll-free throughout all *England*, and if any took Toll of them, that they might take as much in *Withernam* of their Goods within their Juriſdiction, 8 *R.* 2. *Grants* 105.

XXXIII. *Where the Grant of the King to an Abbot, to be diſcharged of a Corody is good, where not, and where the Grant of the King of a Corody is good, and by what Words.*

IF the King grant to an Abbot that he ſhall be diſcharged of a Corody, this is good, for yet the Foundation ſtands, and as good as if expreſſed upon the Foundation, *&c.* And a Grant that he will not have Corody, is alſo good, 8 H:7.12. 21 *E*:4.18. by *Pigot*, 11 H: 4. 79. yet the Corody is incident to the Foundation: And if the King grant to me the Patronage, he may reſerve the Corody by expreſſe words, 26 *Aſſ.* 53 10 *Eliz: Dyer* 269 *acc. vi. C*:9. *part* 133. 17 H:6,7.5 E:4 3 *M. L*: 5. E: 4. 122. although the King do releaſe the Corody, yet the Patronage doth remain, and the King may grant the Patronage reſerving the Corody.

And ſee, that a Corody ſhall never be extinct by matter impl'ed, as the Grant is, that ſhall be as free, as the King is in his Crown; and alſo a Releaſe of all Actions Seculars, and Services, *&c.* 44 *E*: 3. 24. 14 *H*: 6. 12. An Abbot cannot preſcribe to be diſcharged of a Corody, 9 *E*:4.43.

Vi. Br. Corody ac. F. N. B. 230.

The Writ of the king to admit *I:S*: to a Corody was naught, by all the Juſtices, becauſe it did not recite that the King had the Corody by reaſon of the Foundation, or the Grant of the Abbot, *&c.* 1 E 4. 10. yet ſee there

there a Preſident ſhewed where the Writ was admitted good, to *talem Corodiam, qualem* ſuch a one *habuit*, ſee 20 E: 4. 12. *vi: Br. Corody* 17 *ac: F: N: B:* 23

Note by the Juſtices, that the King may grant a Corody of ſo much bread, *&c.* to 20. men: But where the Corody is, to ſit in the Hall of the Prior, and to be ſerved as his Servants, he can grant the ſame but to one, 8 *E:* 4. 17. 24 *E:* 4. 83.

XXXIV. *Where the Grant of the King without Deed, or by Deed not enrolled, is good, where not.*

TEnant of the King makes a Leaſe for life, and grants the Reverſion to the King, the Tenant attornes, who grants it over to a Prior, who grants it back to the King, *&c.* and this matter is found by Office, and holden good for the King, for the land being holden of the King, the Grant is good without Deed, as a Surrender, 49 E: 3. 4.

Note, that a Deviſe was made to the King of Goods without Deed, and without a Will in writing, it is good by Word onely; and into whoſe hands ſoever the Goods come, he ſhall be charged to the King. And ſo was it adjudged, 40 *Aſſ:* 35 *Monſt. de faits*, 49. and therewith agrees as to the Goods, *Danby*, 37 H: 6. 10. And there it was granted by the whole Court, that if a man give lands to the King, and deliver the Deed to the King in the Exchequer, or to his Cofferer, that the right of the land is preſently in him.

But ſee 5 E: 5. 7. and 7 E: 4. 17. That ſuch a Feoffment to the King is naught, if the Deed be not inrolled, for Livery cannot be made to him, by all the Juſtices, alſo he cannot be Feoffee to the uſe of another: And ſee 1 H. 7. 28. that the Remainder doth not paſſe to the King before that the Deed be enrolled, *Feoffments* 30 *Vi:* 1 H. 7. 13. *Br. Feoffments to Uſes* 31. 14 E: 4. 2. 37 H: 6. 10. And *Vi:* 10 *Eliz: Dyer* 355 If the Deed be not enrolled in the life of the King, it cannot be afterwards, 3 *Eliz: Dyer* 195. *acc.*

Note, the Feoffment of the King, of his lands of the Dutchy of *Lancaſter* which are not within the County Palatine, may paſſe by livery without Deed, but not by Deed without Livery: But a Leaſe for years of them ought to be by Deed, by all the Juſtices, 21 E. 4. 60. *vi.* 11 H. 4. 84. The King as Duke is a Subject, ſee 34 H. 6. 34.

XXXV. *Where the Grant of the King allowed in Eyre, is void, notwithstanding the allowance, and where the allowance ſhall make it good.*

A Grant which is void in it ſelf ſhall be made good by no allowance, as a Grant, *&c.* That they ſhall not be impleaded out of the Town, *&c.* this is void if it do not expreſſe before whom, *&c.* they ſhall be impleaded there, 20 E. 3. *Grants* 64

The king granted unto an Abbot that he, *&c.* ſhould be quit of repairing Bridges, Cawſeys, *&c.* and this Charter was allowed in Eyre, yet it was adjudged, that he ſhould not be diſcharged of repairing a Bridge which he ought to repair by reaſon of his Seigniory, *&c.* for that's to the people, and the tryall in a *Quo warranto* was but an Inqueſt of Office at the ſuit of the King, but he ſhall not pay for his paſſage, *&c.* nor ſhall do works at other Bridges, *&c.* but ſhall be quitted thereof by the Grant, 3 *E.* 3. *Itin: Nott: Aſſiſe* 445.

See 9 H: 7. 11. That no allowance of a Charter of Conuſance granted before time of memory is good, if it were not allowed in Eyre, and ſee 33 *E.* 3.

Conuſance 87. That Conuſance ſhall not be granted in a Writ of Right, *Pracipe in Capite* by no allowance in other Writs, although that the Grant be new, and have ſpeciall words, *Quicquid in nobis eſt.*

Conuſance granted in Aſſiſe to him who had a Charter, *Quod habeat Curiam ſuam Regalem*, without allowance in an Aſſiſe, 30 *Aſſ:* 31. So where the Charter was before time of memory, by theſe words, *Omnem Regiam poteſtatem, et cognitionem omnium placitorum*, with allowance in an Aſſiſe, 34 *Aſſ:* 14. 12 H. 4. 13.

Charter of Conuſance of all Pleas granted in an Aſſiſe, allowed before in Aſſiſe, 12 *E:* 3. *Conuſans* 81.

Note, that the Grant of Conuſance which doth not expreſſe the certainty, &c dependeth wholly upon allowance, 8 *E:* 3. 2. a good Caſe: And there ſee, that the party himſelf ſhall have Conuſance by a generall Charter, if it hath had a ſpeciall allowance in the Caſe, ſee 41 E: 3. *Conuſans* 31. it needed not to have been allowed in a ſpeciall action.

XXXVI. *Where the Grant of the King of Conuſans of Pleas ſhall be good, and by what words, and where he ought to have a Writ to allow them, and where he ought to ſhew allowance.*

GRant of Conuſance ſhall never be good if it do not expreſſe before whom the Pleas ſhall be holden, 20 E: 3. *Grants* 64. 44 E: 3. 17. 3 H: 6. *Conuſance* 4. Or a thing which doth amount to as much, as in *Curia ſua* &c. 31 *Aſſ.* 6. 44 E 3. 17.

See 12 E: 4: 13: Where Conuſance was granted upon a Charter before time

time of memory, which did not appoint a Judge with allowance: For *Thirning* ſaid, that ſuch a Charter was good at the time of the Grant, ſee 8 E:3.2.

Grant of Conuſance of all manner of Pleas, *Quicquid ad nos attinet &c.* will not ſerve for Conuſance in a Writ of Right, *Pracipe in Capite*, 33 E. 3: *Conuſance* 87.

Conuſance granted in an Aſſiſe by Charter, which was, *Omnem Regiam poteſtatem & cognitionem omnium placitorum*, 34 *Aſſ*: 14: 12 H: 4: 13:

So where the Charter was, *Quod habeat Curiam Regalem*, 30 *Aſſ*: 31: Otherwiſe it is of a Charter of all Pleas, 22 *Aſſ*: 49.

Conuſance ſhall not be granted upon no Charter ſhewed, if it hath not been allowed before, without a Writ to allow it, *&c.* but if it hath been allowed before, and that is recorded here, it ſhall be allowed upon demand without a Charter, or other cauſe ſhewed, 35 H: 6: 54: *vi*: 13 E: 4, 5:

Note by *Gaſcoigne*, That the Grant of the King to hold Plea, to thoſe who have holden Plea in the ſame point time out of mind, is void, for it ſhall not take away the Common Law:

XXXVII. *Where the Grant of the King is void, becauſe the Grantee hath not ſued* Ad quod damnum *upon it, and where it ought not to be ſued.*

NOte, that where the King grants Franchiſes to the Burgeſſes of *VV*: which were to the damages of the Lords, and no *Ad quod damnum* is ſued, the Patent was holden void, 16 *E*: 3: *Grants* 53, 54:

Tenant for life alieneth in Fee, upon an *Ad quod damnum* ſued, he taketh back an eſtate for life, the remainder over by leave of the king, yet the Heir ſhall have Aide of the king in an Aſſiſe, becauſe the firſt Alienation was not with leave of the king, &c 34 *Aſſ*: 6: *Aid of the King* 94.

See *F*: *N*: *B*: 224. H: That now it is not the uſage to ſue an *Ad quod damnum*, but onely the licence, &c: but he ſaith, That ſuch a Licence ſhall not be received of the Juſtices without a Writ out of the Chancery of *Quod permittat*, and ſo it is holden, 33 H: 1: 52:

XXXVIII. *VVhere the Grant of the King to make a Sanctuary is good, and how it ſhall be conſtrued and intended.*

THe Juſtices were in divers opinions, if the king at that day might grant Priviledge of Sanctuary againſt high Treaſon, but it was adjudged that an ancient Grant *Quod Abbas &c: liber ſit ab omni Regis obſtaculo, & ut Inhabitantes ejus nullo Regis jugo deprimantur, ſed in cunctis rerum eventibus*

tibus & cauſarum diſcuſſionibus, Abbatis decreto ſubjiciantur, will not ſerve, but for ſuch matters, whereof the Abbot might have conuſance, and not for Treaſon, 1 *H* 7 24 and 26. See there that ſuch priviledge could not be by preſcription without ſpeciall grant of the King: Alſo a diſpenſation of the Pope would not ſerve the turn: Alſo it was there agreed, That it is not a Sanctuary by grant only of the King. untill it be dedicated and conſecrated by the Pope, 1 *H* 7 26.

Note, That a Charter of priviledge which is, *Quod quiſquis fugitivus de quolibet loco, de quacunque cauſa &c. & cujuſcunque conditionis fuerit ipſum ſanctum locum W. ſing: intraverit, &c membrorum & vitæ impunitatem conſequatur, &c*: And agreed by all the Juſtices, that theſe and the like words extend to felonies only and not to Treaſon 29 *Aſſ.* 34:

XXXIX. *Where the grant of the King ſhall be good of an Eſtate not certain in the Grant, and where it ſhall be ſayd incertain in the Grant, and where he ſhall grant a thing incertain to him.*

THe King grants to the Mayor and Commonalty of *W.* the town of *W. Cum pertinentiis*, by this grant they ſhall have the Leet, and all other priviledges, &c. as the King himſelf ſhall have by reaſon of his Seigniory in that town, 18 H.6.11.

The King grants to the Mayor and Bailiffs of *Lancaſter*, all the Liberties, & c. which the Burgeſſes of *N.* had, and good, 20 *Edw.* 3. *Avowry* 128.

If the King grant to me land, rent &c. and doth not determine in the Patent what eſtate I ſhall have, it is but an eſtate at will, 17 *E.*3:45. 21 *E.*4.46:

The King granted to the Abbot of *Weſtminſter*, to be diſcharged of the collection of Tenths granted *Per clerum Angliæ*, the Province of *Canterbury* granted a Tenth, he ſhalbe diſcharged, 21 *E.*4.45. 20 *H.*6. yet if his grant be Collector of his Rents due at the Feaſt of our Lady, this is void. So if he grant to me twenty pounds to take of the Collector of Tenths, &c. if he do not name of what province, it is a void grant, 21 *E* 4 48. See 32 *H* 6 20. where the King granted after the death of *J. S.* &c.

XL. *Where*

XL. *Where the Grant of the King ſhall be taken ſtrictly, and according to the bare Nature of the words, by which hee grants, without other intendment againſt him, and every word conſtrued for his Advantage.*

THe King granted to the Abbot and Monks of *R.* certain Mannors, *&c* and granted farther by the ſame Charter, that at every avoydance, the Prior and Monks ſhould have the diſpoſition of all the profits &c. *Ad ſuſtentationem eorum* and it ſeemed to *Thorpe and Chelr*, that yet the King ſhall have the Advowſons, becauſe they cannot be ſaid their ſuſtenance, 39 *E* 3 21. Hence it followes, that the conſideration of the Grant is materiall.

The *King* grants unto the Chapter &c. the election of the Biſhop, yet he remaines Patron, for Election is no preſentment. 17 *Edw.* 3 40. So it is of a Prebendary, to one and his Succeſſors, 7 *Edw.* 3.

The Biſhop of *L.* claimed the goods of one put to pennance, becauſe he ſtood mute, where it was found that he ſpake the ſame day, the Charter was *Catalla felonũ & fugitivorum ide omnibus hominibus tenentibus & reſidentibus infra terras, & feoda. predict. &c, Ita quod ſi predict. homines tenentes &c. pro aliqua tranſgreſſione ſua ſeu quocunque alio delicto vitam vel membrum amittere debent ſeu debeat, &c.* And it was holden by *Tirwith, Gaſcoigne*, and others, that he ſhould not have thoſe goods by that Charter, for they ſayd, he was not put to death for felony, but for his contumacy and diſobedience to the Law, ſo not within the firſt generall words, for by them he ſhould not have the goods of him who was *Felo de ſe* or Clark convict, and they ſaid, That this obſtinacy could not be called Felony, they alſo ſayd that it was *Delictum*, for which he hath Judgement for life and member: For *Gaſcoigne* ſayd, That the Judgment is but of pennance and by Conſtruction of Law, hee might live long. Alſo *Norto* ſayd, That that which is after the *Ita quod*, being more large then what was granted before, did not bind the King, 8 H. 4. 2.

The Grant of the *King* to *G. Regi Haroldorum* or *Clerico Corone*, &c. for term of his life, yet it is determinable with the office.

Note by *Babbington*, If one be condemned of an eſcape, and fined, and afterwards the *King* pardons him all Eſcapes, yet he ſhall not be diſcharged of the Fine, for this is now as a duty to the *King*, 1 *H* 5 2 The ſame Law, where the King releaſeth all actions, ſuits and demands, ſuch a fine ſo impoſed as before, is not diſcharged by *Paſton*, 9 *H* 6 4. So a pardon of all Occupations, Intruſions, contempts, injuries, will not not take away a Preſentment fallen during the *Kings* ſeiſin, for a contempt.

The

The King ſeiſed lands after the death of his Tenant who had an eſtate in the land but for life, and at the ſuit of him in the Reverſion, the King removed his hand and ſent to the Eſcheator, to deliver him the iſſues and profits, yet by that Writ he had not the preſentment to an Advowſon, for that was not compriſed within the word, iſſues, 24 E 3 7.

But if two be bounden to the King, a pardon to one is a pardon to them both; but if two are Accountants to the King, and he pardon one, yet the other ſhall account for the whole, 34 H 6 3 Alſo one ſhall not take advantage in his particular cauſe of a Releaſe made by the King to him and another 21 E 4 46. And there one ſhall not plead a grant made to him and another for the building of a Chantry.

Where the King grants to one and his heirs Liberties in *Terris ſuis*, that extends only to lands which he hath at the time &c. 38 *H.6* 10 19 *H.6.62.*

If the King giveth me leave to grant a Rent in Mortmain, if I grant it with clauſe of diſtreſſe it is void, for there may be a rent without diſtreſſe, 29 H 7 12.

If the King grant a Rent out of a Mannor, where he hath but the Reverſion, or otherwiſe grant the Reverſion, the ſame is void by *Gaſcoigne and Tirwith*, 11 H 4 85.

An Abbot alone cannot make a feoffment by a Licenſe to him and his Covent to make a feoffment. Alſo where the licenſe is to make a feoffment by Deed, a feoffment without a deed is not good 21 H 7 7.

XLI. *Where the Grant of the King ſhall be taken ſtrictly for his advantage.*

IF the King give lands *&c.* without *Aliquo inde reddendo*, the grantee ſhall hold by Knights ſervice 33 H 6 7.

See 14 H 6 12: 44 E 3 24: That an abbot ſhall not be diſcharged of a Corody by no generall words, as to be ſo free &c: as the King in his Crown, to hold quit of all ſervices ſeculars, actions, and demands:

So a grant of a Sanctuary ſhall not extend to Treaſon, by no generall words, 1 H 7 26: 29 *Aſſ* 134:

If the King grant to me *Cuſtodiam terræ, & hæredis quamdiu in manibus noſtris fore contigerit*, If he make Livery within age, my Intereſt is determined: Alſo if the heir at his full age do not ſue Livery, yet I ſhall not meddle after, but the King ſhall take the profits, 9 H 6 28:

XLII. *Where the Grant of the King ſhall be taken according to his intent favourably for the Grantee.*

Touſſ ſaith, Where the grant of the King is to enure by way of enlargement, that the Grantee ſhall have advantage (as for the increaſe of his Liberties) &c. it ſhall be taken beneficiall for the Grantee, 6 *Edw.*3. 52.

Alſo when his grant ſhould be void in all, if not, that a favourable conſtruction be admitted; it ſhall be taken beneficiall for the Grantee, for that is according to the meaning of the King, ſee for this ground, 21 *E.* 4. 45. 41 *Aſſ* 19.

1 *H.*7. 13. *Plow. Com.* 333. See *C.*1. *part* in the caſe of *Alton Woods*, *acc.* 37 H.6.21. *b.*

And when the intent of the King is apparant, *&c.* as if he grant a Mannor as largely, &c: as I held of whom it eſcheated, or of whom he purchaſed it, 43 *E.*3:22.

So if hee grant all the Land, which ought to come to him by the death of *I.S.* the grantee ſhall have it, and that which is not ſeiſed. Otherwiſe it is, if he grant the land whereof he is ſeiſed by the death of *I:S:* 20 H 4 24: So where it is an ancient grant of the King before time of memory, as a grant unto an Abbot, *In perpetuam hæreditatem*, this is fee, 1 *Henr.*7: 24:

21 *Edw.*4:48: 16 H:4.7 *C:* 1 *part*, If the King grant the Mannor of *D* which he hath by the Attainder of *I:* S: and he hath it not by Attainder, the grant is void.

The King granted the Chancellor *&c:* of *Oxford* Conuſance when one party is Clerk, and upon that it was agreed that he ſhould have Conuſance, where himſelf was party, becauſe the Chancellor is alwayes a Clerk 8 H. *6:*19:

The Moyety of a Mannor paſſeth from the King by the name of the Moyety of a Knights fee. 47 *E:*3:21:

See *Bracton Alienation* 1: *William de Riparaves caſe:*

The King grants to his Patentee, that if he be impleaded and looſe &c: that he will render him other Lands in value, this was holden a good warranty to have recompence. 39 *E:*3:12:

The King giveth licenſe to *B:* to give lands and Tenements in Mortmain to the value of a 100 *s* by the yea', and he giveth an Advowſon, and good, becauſe an advowſon ſhall paſſe by the name of Lands and Tenements, 33 *E:*3: *Grants* 103.

XLIII: *Where*

XLIII *Where a man ſhall have a thing by generall Grant of the King, by matter* ex poſt facto, *which by no poſſibility he could have at the time of the Grant.*

NOte by *Fairfax*, that by generall Grant of Conuſance, the Grantee ſhall have Conuſance of all the actions which were at the time, although it be enlarged for other matters, or a greater pain given &c. if the principall writ was at the time, 22 *E.*4.22 and 6 H.7.5. and there agreed, that the Lord of a Leet ſhall not enquire of the ſame action enlarged by Statute to other matters (as Rape made felonie) although the action were before by ſuch grant to have a Leet, See 7 H. 6. 35. by *Strange*.

22 *E.*4.21. *acc.* *Vide* 8 H.7.1. 7 H.6.13.. 18 H 6.11.

XLIV. *The Grant of the King is ſtronger than Confirmation, and where his grant ſhall be taken but as a Confirmation.*

IF the King recover in a *Quare impedit*, and grant the Preſentment, this is a good execution of the recovery, but if he ratifie and confirm to the Incumbent who is in of anothers preſentation, yet he may have a *Scire facias* to execute the recoverie at the next avoidance &c: 9 *E* 3. 20.25. *E* 3.11.10 H.4.4. 11 H.4.74

A Confirmation ſhall enure alwayes upon an eſtate precedent, and according to it, but by Grant the thing paſſeth &c. *vide* 44 *E* 3 17. and there the Charter was taken according to the words of the Grant, where it was of Confirmation, and further granted &c. but ſee 11 *E.*4.1. where *Littleton* ſaith, where the King doth confirm a Grant precedent, and further grants the ſame thing, all is but a Confirmation, and if it be not a good Confirmation, it ſhall be void, for that was his intent, ſo deceived.

The King grants to the Biſhop of *E. priſas ſuas*, at ſuch a Port *&c.* whereas in truth the Biſhop had certain priſes there before, and it was holden, that it was but a Confirmation of the ancient Priviledge, 6 *E*:3.51.

XLV. *Of what effect the Grant of the King ſhall be of a thing to which he hath no right at the time &c. and after his Intereſt is annulled.*

A man leaſeth a Mannor for life ſaving the Reverſion, and afterwards is attainted, and afterwards at the ſuit of the heir this attainder is utterly reverſed by Parliament, and the heir reſtored, &c. afterwards the King grants the Reverſion to a ſtranger with warranty, and the Tenant for

for life dieth, the Heir brought a *Scire facias* againſt the Patentee who prayed in aid of the King, and had it by award, and recovered in value, yet the King had not any thing at the time &c. 39 *E* 3 12 and note here, that the Plea in the diſtruction of Patent not allowed to overthrow the warranty, but ſee 29 *F*.3:22: where the King granted ſuch Reverſion, the Tenant atturned after the attainder utterly reverſed by the King and Parliament, by which he granted the Reverſion to a ſtranger, who brought a *Quid juris clamat* againſt the Tenant for life, and he was driven to atturn, without making the Patentee party &c.

If the King be ſeiſed of ſuch Land. and that without matter of Record, and grant it over, I ſhall have an action as the Caſe lieth, againſt the Patentee.

If the King grant an Office to which he hath no right, as there is no ſuch, this is void, although one hath uſed the ſame by his patent before, 13 H.4 18. but if his varlet hath been admitted to a Corodie, to which he hath no right, he may well grant the ſame again, for that the houſe is charged with it for ever. 13 H 4.17.

The King grants Land ſeiſed for alienation without licence before the Statute, to the ſame Feoffee to hold of him, yet he ſhall hold of the firſt Feoffor, 20 *Aſſ*.17.

XLVI. *Where a man ſhall take advantage of the Kings Grant againſt his own Act.*

NOte, the Grantee of the King to be diſcharged of Taxes, Tenths, Fifteenths &c. ſhall not be charged by the generall Grant of Parliament, Convocation, Province &c. although he himſelf be one of them, but it lay not in his power to deny it &c. 19.*H*.6.63.21 *E*.4.45.

XLVII. *Where there is a Condition, Conſideration or Reſervin the Grant of the King:*

IN every Grant of Conuſance there is a Condition implied that he ſhall do right, and another that the matter be ſuch that he may judge of, and another, that he demand it within convenient time, of the firſt ſee 12 *E*. 4.7. and infinite Caſes of the ſecond, 1 *H*:7:24:and 26. 29 *Aſſ*. 3 *H*.4.8. 8 *E*.4.8. 11 *H*.4.40 8 H.6.7.

So in a Charter of exemption of Juries, there is this Condition implyed, if there be enough beſides him &c. 21 *E*.47 and he ſhall alwayes be ſworn as a witneſſe, notwithſtanding the Charter, by *Choke*, 21 *E*.4 48.

The King grants to *Garter*, that he ſhall be King of Heralds, taking

201 by the year for his life, by reaſon of his office, now this is good upon Condition (*s*) ſo long as he is Herald, and that although the Clauſe, *ratione Officii* were out of the Charter, 7 *E.* 4 23. The like Condition is implyed in the Grant of an Office, 39 H.6.34 *B.*

The King gave Lands *ad effectum*, that the Grantee ſhould give it in *Mortmain*, this a good Condition, 38 H.6 35. & 38.

Reſervation is implyed in the Grant of the King without mention, as Tenure, things appendant not expreſly granted, and things more ſpeciall then thoſe which paſſe of common intendment by the generall words, and things which touch his perſon and Crown.

XLVIII. *Where a Condition in the Grant of the King, which is againſt the nature of the Eſtate or thing granted, ſhall be good.*

THE King gave Lands to the Earl of *G.* and *M.* his wife, ſo, as if his wife ſhall ſurvive, that ſhe might aliene, 18 *E.*3.31. *B.*

The King enfeoffeth one in Fee, upon Condition that he ſhall not alien, this is a good Condition by his Prerogative, 21 H.7. 8 *a.*

XLIX. *Where the Grant of the King ſhall determine by his death.*

THE King cannot grant Priviledge of Sanctuary for Treaſon to bind his Succeſſor, 1 H.7.26.

King *Edward* the ſecond granted a Prohibition, that no writ of *Ceſſavit* ſhould run in *Northumberland*, during the War, it ſhall not bind his Succeſſor, 9 *E.*3.16. So every grant of a Judiciall office is void by his death, 1 *R.*2.4.

L. *Where the Grant of the King ſhall be good, concerning a thing which toucheth the ſpirituall Juriſdiction.*

IF the King grant to one who is choſen Biſhop, that he ſhall *retinena les benefices*, after that that he is choſen Biſhop, this is good by *Hank. Norton*, *Skrene*, otherwiſe it is if he were created Biſhop before ſuch Grant, and the ſame difference holdeth place in diſpenſation of the Pope in ſuch matter, 11 H. 4.58.74.

By the Grant of the King of the poſſeſſions of the Templers diſſolved to the Hoſpitallers of Saint *Johns*, to hold as &c. yet the Appropriation of Churches

Churches to the Templers will not ſerve them, although confirmed by Parliament, 3 *E.*3.11.

The King by his Grant cannot make an appropriation, nor it cannot be made without him, 7 *E.*3.5. 3 *E*:3:11: and of appropriation and Union by Grant and Confirmation, ſee 50 *E.*3:26.6 H.7.13.

GRANTS OF COMMON PERSONS.

I. *Grant of Tithes by a Spirituall man, or that he ſhall not take them, or the Grantee ſhall not ſue for them, and a Grant to him is good.*

COmpoſition before time of memorie, is a good diſcharge of Tithes, and may be well averred where the Parſon hath *quid pro quo*, as Land &c.8 *E.*4.13.

See that a Grant to be diſcharged of Tithes ſhall be a good Bar in the Spirituall Court, and by that he who is ſued for Tithes againſt it ſhall not have a Prohibition &c. 8 *E.*4.13.

Tithes ganted to a Lay peſon are become temporall, and ſhall be claimed by him, as Lay Chattels, 38 *E.*3.6,42 *E.*3.12.

One gave to a Religious houſe, *cum corpore ſuo novam garbam de toto Dominico ſuo in B. in puram eleemoſynam*, and afterward enfeoffed a ſtranger of the Land, who took the ſheaves, and the Prior ſued in the Spirituall Court, and well, ſo of the ninth part of Tithes, *T.*6 H.3. *Prohibition* 18.

In ancient times a man might grant his Tithes to whom he pleaſed, as other aims, by *Herle* 7 *E.*3.5 See 44 *E.*3.5.

Upon a Compoſition betwixt the Parſon and an Abbot, that the Abbot ſhould not pay Tithes of his Demeſne Lands, it is good, yet Treſpaſſe doth not lie againſt the Parſon for taking of them &c. becauſe the Right of the Tithes is to be tried, but if the Parſon grant to me my Tithes for two years, and he takes them, Treſpaſſe lieth, for I acknowledge the Right and claim a chattell &c.38 *E*:3:7: *Juriſdiction* 43.

II. *Where the Grant of a common perſon ſhall be made good by Confirmation of the King, and where by Confiomation of a common perſon.*

THE Biſhop and Chapter ordain three Officers, the Chancellour, Treaſurer &c: and gave to each to them a Prebendary by ſuch name, and the King did confirm the Ordinance, and further granted, that they ſhould not called Prebends, but according to their names of Dignities, this is good, and they ſhall be ſo impleaded, and by that the King brought a *Quare impedit* againſt the Treaſurer of *L.* without other Execution, 50 *E.*3:26.

Quintin leaſed for life rendring eight Marks, and granted four of the eight marks to a ſtranger, to take of the Tenant *&c.* and died, the Tenant died, the heir of *Quintin* did confirm the Grant of his Father unto the Grantee for life, and granted that he might diſtrain for it, and it was agreed, that this is a good Rent-charge, although the Confirmation was after the death the Tenant, and after his Entrie, becauſe it was before the Rent was extinct by Judgement, by *Schard*, 14 *E.* 3. *Aſſiſe* 109.

A man grants a Rent, and dieth before atturnment, and afterward the Tenants in the name of Atturnment deliver to the Grantee a pledge, and the heir doth releaſe unto him all his Right, and in aſſiſe he was found ſeiſed and diſſeiſed, by which he recovered, for it may be that he was ſeiſed, at the time by Diſſeiſin, by *Scot*, 16 *E.*3 *Aſſiſe* 74.

Of the Confirmation of the King, of the Grant of a common perſon, See 44 *E* 3. 17.

Of the Confirmation of the King of the Grant of a Biſhop out of the Church, *grants* 5 *E.*3.42.

If a Parſon make a Leaſe for life and dieth, and his Succeſſor receiveth fealty of the Leſſee, he ſhall not avoid the Leaſe during his life, 11 *E.*3. *Abbe* 8.

III *Where the Grant of the Cominalty is good, although they have no corporation, and when a grant made to them by a common Perſon, is good.*

NOte, a compoſition betwixt the Abbot and the commonalty to S. by which the commonalty grant to repair certain Mills, was holden good yet there was not any corporation alledged in them, for they had not a Major, nor Bayliffs &c. 2 H. 6; 9 *Grants* 3.

The Lord of the Mannor of B. &c. granted to the Commoners of F. that the way betwixt B. and F ſhould not be ſtraitned nor diminiſhed, by him, nor his heires, but kept at large &c. By this Grant the Commoners

ners of F may diſturbe his heir to dig the way &c. 32 E 3: *Bar.* 261: *See.* 12. H. 7. 2. A grant of Land to a perſon to the uſe of the Pariſh.

IV. *Where a grant to diſtraine for ſo much Rent ſhall make it a good Rent-charge, and where a grant of the Lord to deſtraine in other Land ſhall be good, where a grant that a ſtranger ſhall diſtraine.*

IF a Man grant to me that I ſhall diſtraine &c. for 20 s. of Rent, it is a good grant, *ut dicitur*, 9 H. 6: 9: 6. yet there is no word of grant, *vide* 26. *Aſſ.* 34 by *Skipwith vi.* 29: *Aſſ.* 23. partition 12: if a man grant a rent, and if it be behind *quod de terris ſuis levetur*, the ſame is a good rent-charge *vi.* 21 H. 6 11 17 E 46 If I recite that I have granted a Rent to I. S and that he and his heires may diſtraine in the Mannor of D, for it is a good grant although there was no grant before, by *Markham.*

A man grants a rent by theſe words, *Obligo me &c: in uno annuali reddita &c: & obligo manerium &c: ad diſtrictionem ballivi Dom. regis &c.* this is a good rent charge 46 *E* 3 18. *vi.* C 7 part. *Butts* Caſe, If I grant to you that you and your heires ſhall diſtraine for a Rent of 40 s. within my Mannor of D. the ſame by conſtruction of Law doth amount to a grant of a Rent out of D. 3 E 3 12 3 *Aſſ*: 7 22 H 6 21 But when one grants a Rent out of his Mannor of Dale and if the rent be behind that the Grantee may diſtrain for the ſame Rent in the Mannor of S it is but a penalty in the Mannor of S. for if it ſhould be a grant of a Rent out of S. the Grantor ſhould be twice charged. *vi* 9 H. H 9. If a Rent were in *eſſe* before then the Grant of diſtreſſe is but a penalty, But ſee *F. N. B.* 224 G 41. E 3 15 1 *Aſſiſe* 10. *Br. Aſſ.* 105 that the party ought to ſue an *ad quod damnum*, which proves it to be a new grant.

A *Prior* granted to one by fine to ſing Maſſes &c. and granted that the Juſtices of the Common Pleas or Baron of the Exchequer ſhall diſtraine to make them do them; and the heire brought a *Scire Facias* againſt the Succeſſor, and had a Writ to diſtraine him to do them &c. 38 E 3 29 *Quere* what remedy if the Bayliffs of the King or the Juſtices will no diſtraine, for it is in their election, by *Mowbray.* 38 E 3 39. 14. *Aſſ.* confirmation 13. If Leſſee for life grant a rent in Fee and dyeth, and he in the reverſion confirmes it with words of Diſtreſſe, it is good, and is as a new grant, So. 46 *E.* 3. 32. If the Grantee purchaſe parcell of the Land, and yet the Tenant grant that he may Diſtraine for the ſame Rent, this is a new Grant and a new Rent.

The Tenant granteth to the Lord that he ſhall diſtraine in other Lands for the ſervices, this is good, and he ſhall avow in them: and ſuch grant unto an Abbot doth not make Mortmaine, for it gives not a new rent, nor Signiore, 9 *H.* 6 9. 41. *Aſſ* 3. A man ſeized of a Meſſ. and two Carues of Land in W. bearing the name of W. granted a Rent of 40. s. and to I. S. *precipiendum apud* W. and if the ſaid Rent be behind that he ſhall

diſtrain

distraine *in omnibus terris & tenementis apud* W. B C. and D. in an *Ass.* the Lands in W. were onely put in view, and it was holden, that the Lands in W. were onely charged with the Rent, and the Lands in B. C. and D. were onely as a penalty.

The same law of a Rent-charge 2 E 2 *Assise* 160. 41 E 3 15. 32 H6. 27 17 E 4 6 But it is holden that the other Land of him is not charged as with a rent issuing out of it.

V. *Where the Grant of a Common person shall make things appendant or appurtenant to passe, and where incidents shall passe by the words appurtenances.*

NOte by *Finchden*, If a man gives a Mannor by fine or by a Feoffment without Deed, all the appurtenances passe, yet there is no expresse mention of them 44 E. 3. 40. And he saith 44 E. 3. 20. That he who recovers a Rent, he shall recover fealtie, also if it be a Rent-service, because incident, 5 *H.* 7. 38 it is holden that an Advowson appendant doth not passe by a Feoffment of the Mannor, without saying, with the appurtenances, against 44 E. 3. *Brief* 581.

Paston saith, If a man grant an Advowson appendant to a stranger for terme of life, yet the reversion is appendant to the Mannor, and shall passe by grant of it; otherwise it is where he leaseth the Mannor for life, saving the Advowson &c. for there it is made in grosse 38 *H.* 6, 34.

A man leaseth Land, parcell of a Mannor for life, and afterwards grants the Mannor to a stranger, the reversion shall passe *M.* 15 E 3. *Grants* 62.

A man dyeth seized of a Mannor, with Advowson appendant, the yongest son entreth, the eldest son levieth a Fine to him of the Mannor and Advowson, and releaseth &c. The yongest son renders back the Mannor, and the chiefe Messuage with the appurtenances in Fee, adjudged that the Advowson doth remaine to the yongest son, 12 E. 1. *Grants* 87.

VI. *Where a Grant made by an Infant is good.*

AN Infant seised of a Mannor with a free Chappell appendant, to which his Ancestors time out of mind have used to present a Clark: The Presentment of the Infant to the same is good and effectuall, for he can have advantage of this no other way: Also his Writ to present to an Advowson is good 26 *H.* 6. *Grants* 8. *Perkins* 4.

It seems by *Perkins* that he ought to be of the age of discretion, at which age he saith, that his Obligation *Pro victu & vestitu* is effectuall, 18 E. 4 2.

It is a Maxime, That Grants of an Infant which take effect by delivery of his hands, are not void, but voidable 7 E. 4 7. by *Coke*.

If an Infant give me a Horse, and deliver him into my hand with his own

own hand, yet he ſhall not have Treſpaſſe, *P*: 16 *H* 6. *Releaſe* 8.

The Infant himſelf, nor his Heir, nor his Feoffee ſhall not ſay againſt his Deed of grant of a Rent charge, that he did not grant by the Deed, for the Deed is but voidable, *Perkins* 3. *ac.*

VII. *Where by a generall Grant by the name of Land, Tenement, Rent &c. a Mill, Reverſion, Common Advowſon, Services, &c. paſſe.*

NOte, If a man grants all his lands and Tenements in *D.* if he hath Common in groſſe in that Town, it ſhall alſo paſſe, by *Newton*, cleerly; and therefore he would not demur, 11 *H* 6. 12. *Grants* 8.

Martin ſaith there, that a Way ſhall not paſſe by ſuch Grant, if it be not appendant to ſome of the lands. *Newton* ſaid, that a woman ſhall be endowed of Common.

And it is holden by all the Juſtices 20 *Aſſ*: 9 that a Common ſhall not paſſe by the name of Tenement, nor of Paſture, but onely by the name of Common.

A Reverſion ſhall well paſſe by the generall Grant of Tenement, 11 H: 6 12. 34 *H*. 6 8. 3 *H*: 6 5. 16 *E*: 3. *rants* 55.

5 *H*: 39 *ac vi*. 11 *H*: 7 19. A Reverſion is a Tenement, becauſe he in the Reverſion holdeth of the Lord; But a Remainder is no Tenement, and is not ſubject to a Diſtreſſe.

A man grants a Mill, whereof his Mother holdeth a third part in Dower by theſe words, *Totum molendinum meum*, and ſaies nothing of the Reverſion, yet it ſhall alſo paſſe with Attornment of the Mother, 30 E. 3. *Itin. Cornub. Grants* 86.

He who Grants the Reverſion of Tenant in Dower, or by the Curteſie, ought to grant it ſpecially although they have Granted over their Eſtate: Otherwiſe if it be by Fine, it ſhall not be received, 18 E: 3. *Fines* 44.

The Donor granted the Services of Tenant in tail by Fine, *Scrope* ſaid, That by that the Reverſion ſhould well paſſe with Attornment, and ſaid to the Tenant in tail, that he ſhall be in Cuſtody untill he attorn, for which he attorned preſently, *An*: 30 *E* 3 *Itin*: *North*: *Per que ſervitia* 17. See 26 *Aſſ* 66. Where ſuch a Grantee had the Wardſhip of the Iſſue in tail.

A man releaſeth to him who holdeth of him by Fealty and Rent, all his right in the land ſaving the rent, yet this is a Rent-ſervice as before, 12 *E* 4. 11. *Releaſe* 10. So by Grant of ſuch rent, the Fealty paſſeth as it ſeems, 44 *E*: 3 19 *Perkins* 23.

Danby ſaith, That if I make a Feoffment of two acres, and deliver Seiſin

sin of four acres, that the four acres passe by the Deed. So if the Feoffment be of a Mannor, and the Livery in twenty acres, the acres passe by the Deed. *Choke* said, that is, if they be known by the name, *&c.* 7 E:4. *Feoffments* 23.

An Abbot Parson Imparsonee, before the Statute did grant the same Church to another Abbot, *&c.* And the opinion of *Stone* was, that the Vicaridge of the Church did passe by the Grant. *Thorp* contrary, When he was not seised thereof to his proper use, and not especially mentioned: And *Fitz.* notes, the Advowson of the Parsonage did passe by the name of the Church, *T:* 16 *E:*3. *Grants* 56. the Grant was by Licence of the Pope.

7 E.3 *Quare Impedit* 19. 30 E.3 *Quare Impedit* 5.

Note, an Advowson may well passe by the name of Lands and Tenements; and threfore where the King gave licence to one to give Lands and Tenements to the value of a hundred shillings in *Mortmain*, and the party did give the Advowson of a Church, that the same did passe, 33 *E:* 3. *Grants* 102. So an Advowson is valuable, see 5 *H.* 7. 38. that an Advowson doth not passe by the grant of Lands and Tenements, and that it cannot be of value, see *Monstrans de faits* 114.

Herle saith, An Advowson is no Tenement, 8 *E:* 3. 28. and 8 *E.* 35. he would not allow the Return of the Sheriff of an Extent in Dower, because he did extend an Advowson: But 10 E:3. 13. an Advowson was extended in Dower, and delivered in the name of other Advowsons. And it is said, 8 E:3 35. It shall be valued by the Court, not by the Sheriff.

Lord and Tenant by Homage, Escuage, and six pounds rent, the Lord Grants the rent to a stranger, with Wards, Reliefs, Escheats, and all that might fall by the death of the Tenant, yet the Services do not pass (as it seems) there, for the Grantee being driven to make his claim, *&c.* claimed a Rent-seck; yet *Thorp* thought it a Rent-service, see the case, *P:* 15. E:4. *Hors de son fee* 28.

It was adjudged, 4 *E.* 3. *Itin: Derby, Feoffments* 29. That by the Grant of a Water and Piscary, that the Soil did pass, as by the Grant of a Pool, *vi:* 18 *H.*6. 30.

14 H.8 1. *by Lease of a Wear the soil and fishing passeth.*

So the Soil shall pass by the Grant of a Stream, *&c* 8 E: 3. 13. see 45 E: 3. *Dower* 50. of the Grant of the profits of a Mill.

And an Advowson of a Church shall pass by the Grant of Advowson of Tythes, 4 E:3. 27.

Land shall not pass by the name of a house, because it is not parcell: But by the Grant of the Vesture of the land, the land it self shall pass. See for these, 12 H:6. 2. 14 H:8 7. and 17 E:4. 6.

VIII. *Where a Grant of parcell of the Services is good, and where a Grant of the Services of parcell of the Land holden, is good, and where the Grant of a Reverſion of one Tenant, where there are two, or of parcell of the Land, &c. and where not.*

IF a man hold of me three acres of land by twelve pence, and I grant the ſervices of the third acre, this is void, by *Littleton*, for I cannot ſever the Tenure, *M*:8 *E*:4 *Grants* 19.

Two joynt Lords, one Grants his Moyety of the Seigniory, *&c.* it is a void Grant, by *Herle*, 5 *E*, 3.31. 9 *E*:3. 31. Otherwiſe it is of Parceners, becauſe their Right is ſeverall, by *Herle*, 5 *E*:3.31.

In a *Per que ſervitia*, it is a good Plea, that he holdeth joyntly with other not named, or that he holdeth of the Conuſor and another as joynt Lord, 9 *E*.3.31. And *Kelſ.* ſaith there, If the Lord grant the Moyety of the Seigniory to a ſtranger, &c: that he ſhall have but a Rent ſeck, &c. 9 *E*:3. 31.

If a man make a leaſe to husband and wife for life, and afterwards granteth the Reverſion to a ſtranger, of the lands which the husband holdeth, it is void by *Schard* and the Court, H: 13 *E*:3. *Grants* 63. The ſame Law if one grant a Reverſion which is to him and another, 27 *E*.3.1.

Two Joynt-tenants of a Hundred, one granted his Moyety, and admitted good, 9 *E*.3.36.

IX. *Where a Grant of the Reverſion to Tenant by Statute-Merchant ſhall be good.*

THe Conuſor grants the Reverſion of ſuch lands which *I*: *S.* hath in execution for ten years, by force of a Statute-Merchant, the Grant is good, and the Grantee ſhall have a *Scire facias* againſt the Conuſee, who attorned upon the Grant of the Fine within the Term, with a ſpeciall allegation that he hath levied the monies by caſuall profits, &c. or entred after the Term, 32 *E*: 3. *Scire facias* 101.

See 44 *E*:3.21. The like Grant by Fine of a Reverſion of him who had execution of a Recogniſance.

X. *VVhere a Grant of Rent out of the Reverſion, or ſuch like thing which doth not lye in Demeſne, is good, and when ſuch Rent ſhall begin.*

A Man makes a Leaſe for life rendring two ſhillings ten pence of rent, afterwards he granted the two ſhillings ten pence rent to a ſtranger, *percipiendum* out of the Tenements, &c. he ſeiſed died, the Tenant died;

it was holden his Heire might claim it as a new Rent, charging the Reverſion, by *Schard* and others, notwithſtanding the Seiſin of his Anceſtors of the ſaid Rent, firſt reſerved, and notwithſtanding that there were no word that the Anceſtor ſhould have it to him and his Heirs for the life of the ſtranger. So a Reverſion charged without expreſſe words of Reverſion, 33 *Aſſ*: 4. *Grants* 78.

9 H. 6. 52. b. by Babbington ac. A man leaſeth for years, and afterwards grants a Rent-charge, this is good to charge the Reverſion, *vi*: 5 H: 5. 8. So of a Leaſe for life, 38 *E*: 3. 5. And in the firſt caſe it was agreed, that the Leſſor ſhall be charged before the Term expire, if the Leſſor ſurrender to him, becauſe the Term is extinct: Otherwiſe it is, if the Leſſee grant to him parcell of the Term, becauſe there he is in by him, and the Reverſion is not executed, 5 *H*: 5. 8.

See 10 *E*. 4. 4. Where *Danby* and *Needham* ſay, If the Beaſts of the Grantor come upon the land, during the poſſeſſion of the Termor, the Grantee may well diſtrain them. *Moile* denied that, becauſe the land is diſcharged during the Term: And ſo ſaies *Thirn* and *Hankford*, 14 *H*: 4. 31. Where a man granted a Rent out of land wherein he had nothing, *&c.* becauſe the land is diſcharged, ſee 26 *H*: 8. 5. and 33 *E*: 3 5. It ſhall not take effect till the Demean come to the Reverſion.

In a *Darein preſentment*, the Defendant doth releaſe and quit claim to the Plaintiff all the right which he hath unto the Advowſon *in perpetuum*, and for his Releaſe, the Plaintiff with the aſſent of the Ordinary, grants to the Defendant twenty ſhillings annuall rent in fee, iſſuing out of the Church *percipiend. per manus perſonæ, &c.* And agreed to be a good charge in perpetuity, becauſe it appeared that the Church was void at the time, &c. 31 *E*: 3. *Grants* 90.

See 38 E: 3: 5. That a Fine of the Patron alone ſhall never bind the Church, yet it was an ancient Fine, but it doth not appear there that the Ordinary did conſent, nor that the Church was void at the time. And *Fitz.* abridging the caſe, *Charge* 5. is of opinion, that the Patron and Parſon cannot charge the Church in perpetuity without the Ordinary.

Upon debate of an Advowſon betwixt an Abbot and *T.* the Abbot acknowledged by Fine, &c. And *T.* granted that every Preſentee ſhould pay twenty ſhillings annuall Rent to the Abbot in Fee, all was done by aſſent of the Ordinary, &c this was good, and ſhall bind the Parſon, by whomſoever he is preſented &c. 6 *E*: 3. 55. 7 E: 3. 40. 7 E: 27. and 43. A Grant of the Patron alone, to take of the Church is good in perpetuity by confirmation of the Parſon, and confirmation of the Ordinary afterwards, &c. A Diſtreſſe taken in the Church by Books, 8 H: 5. 4.

A Grant of the Advowſon in fee, reſerving ten pounds of rent due before, *&c.* the Church is charged with it, and a Diſtreſſe limitted in other land is but a penalty 29 *E*. 3. *Aſſ*: 366.

Aſſiſe of a rent granted to take of the Mannor of *S.* and becauſe the Demeans of the Mannor of which the Grantor was ſeiſed at the time of the Grant, was in divers Towns not named in the Writ, for which the Writ was abated, which ſhould not, although that the Services of the

Mannor

Mannor had extended into *S.* and other Towns, becauſe they were not charged, *vi:* 12 *E:*3. *Charge* 12.

Upon *Rationabilibus diviſis* three ſhillings of rent was allotted to one for a Piſcary, divided to another, and that by Fine, and it was holden that it was iſſuing out of the Piſcary, not of the Soil, &c. And the party might have a *Scire facias* to execute it, 32 *E:*3. *Scire facias* 100.

XI. *Where the Grant of a common perſon of an Office is good, and where the Grantee may make an Aſſignee, or Deputy.*

HGranted to *T. Officium Meſſoris Manerii de P. capiend. tot quarterna blad. annuatim pro prædict. officio faciend. ad terminum vitæ ſuæ:* And in the end the ſpecialty was, *Et prædict* H. *conceſſit* A. *uxori dicti* the Grantee, *Dictum officium habend. prædict, &c. percipiend. ad totam vitam ſuam in omnibus ſicut prædict.* T. *cepit.* And it ſeemed to the Court a good Grant of the Office, and alſo to have the Corn, &c. Yet *Schard* there ſaid, that by generall Recovery of an Office to which the profits are annexed, by a new Grant, &c. that peradventure the profits ſhall not be recovered, as they ſhould be if they had not been appendant to the Office time out of mind, &c. 30 *Aſſ:*4.

Note, a Collector, Commiſſioner, Juſtice of Peace, of *Oyer* and *Terminer*, and Aſſiſe, cannot grant their Offices over, and therefore their Deputies or Servants ſhall not have aid of the King, and that by the Court tis holden a good difference, 9 *H* 6.21. *Aid of the King* 17.

XII. *Where the Grant of Tenant at Will, or at ſufferance, or of Guardian by Nurture is good.*

DOwer brought againſt *A.* and *B.* his wife, as Guardians, who ſay, that they have nothing but of the Leaſe of *I.* to whom the King leaſed the ſame at Will, rendring, &c. who granted to them their Eſtate, for which the wife was driven to ſue to the King, but if the King had leaſed during the nonage, ſhe ought to anſwer by the Statute of *Bigamis*, 8 *E:*2: *Dower* 169.

The *Prochein amy* ſeiſed the Ward, and granted it over, and the Grantee deviſed the ſame by his Will, 26 *E:* 3. 11. *Guard* 159. Grant of ſuch Guardian 33 *E:*3. *Guards* 161. and 163. where he granted upon Condition, and 8 *E:*4.7. Guardian by Nature granted &c.

It is holden, that Tenant at Will may grant over his Eſtate, 8 *E:*2. *Itin. Kanc: Dower* 169. *Brian contrary*, 22 *h:*4. 6.

XIII. *Where the Grant is good, although the Grantor be miſnamed, or the Grantee, or the thing granted, in name, or ſurname, and ſhall plead it* per nomen &c. *and where it is good made only by the proper name of the Grantor, or Grantee.*

NOte, if I grant a Rent to *W.S.* by the name of *W:G:* this is good, and he ſhall have an Aſſiſe, or diſtrain, and ſhall maintain it by the name &c. 9 *E:*4.43. *Grants* 23. *ſee* 4 H:6.1. contrary.

And *Littleton* there ſaith, If a Remainder be given to *I. S.* by the name of *W.S.* and he bring a *Formedon* in the Remainder, and ſhew forth that Deed, yet the Writ is good, and the Remainder veſted, if he be the perſon. *Fitz.* Note this caſe, &c. and *quære*, becauſe by this it is ſuppoſed that he may have two names of Baptiſme. See *Perkins* 9. That when the King paſſeth by Livery, a contrary name of the Grantor, or of other Grantee in the Deed ſhall not hurt, becauſe the thing paſſeth without the Deed; and therewith agreeth the Argument in 9 *E.* 4. 44 when the matter is not altogether grounded upon matter of Record, or in writing, for miſnaming of the Surname. And alſo *Littleton* there ſaith, If I bring Waſte by the name of *W: L* againſt my Leſſee for life, declaring that he holdeth of me *ex aſſignatione T.* who granted me the Reverſion by the name of *I:S.* this is good, ſee 3 *H:*6.25. 1 *H:* 7. *Feoffmenss* 30. 15 *H:* 7. *Perkins* 8.

A *Formedon* in the Remainder by *H.S.* ſhewing a ſpecialty which proved the Reverſion granted to *H:N.* yet all is good, if the ſame perſon. 6 *E* 3.24. ſo 8 E:3:19. Where *Adam V.* brought a Formedon in Remainder, upon a Remainder tailed to *A.* Son of *R.* and good, if the ſame perſon: See the ſaying of *Babbington*, 11 *H.*6.52.

If an Abbot grant an Annuity by the name of *R.* where his name is *T.* yet the Grant is good, and it ſhall be no plea for the Succeſſor, that he had no ſuch Predeceſſor *R.* &c. 27 E:3.9. *Grants* 67. *Perkins* ſaith *fol:* 9. That is to be intended, if there be no other Abbot of the ſame name.

In Avowry, Title was made becauſe that *R.* great Grandfather of the Plaintiff granted himſelf to be bound in an annuall rent of twenty ſhillings, &c. and bound all his lands in *D.* to Diſtreſſe, &c. The Plaintiff ſaid, that there was no ſuch name *R.* his Grandfather, &c. and the Plea not allowed, but he was forced to anſwer to the Deed, whether it was the Deed of his Anceſtor generally, 4 E:3.44. See the Book, where it ſeems he might have ſaid, no ſuch Anceſtor *R.* but it is not materiall, although he was not his Grandfather, &c. *Avowry* 165.

Hankford ſaith, If I releaſe, &c. by the name of *T.* whereas my name is *W.* yet this is good, *&c.* 11 *H.*4.26.

Quid juris clamat, the Note was, that *G:* Son of *T:* gave, &c. the Tenant ſaid, that *G:* was Son of *R:* who leaſed to him, &c. and was thereupon diſcharged; for *Stone* ſaid, That a Fine which ſhall be good ought

to

to be ſuch, that no debate ariſe upon it. *P:* 11 *E.* 3. *Quid juris clamat* 2.

Annuity againſt the Prior of S. *Johns* of *Jeruſalem*, &c. and declared, that his Predeceſſor granted by the name of Prior of the Hoſpitall of S. *Johns*, &c. and maintainable by the opinion of the Court, 11 *H:* 4. 61. *Variance* 9.

Note, where an Abbot, &c. grants an Annuity, the Grantee may well have an Action againſt the Succeſſor generall, and declare, that one *I: S:* &c. Predeceſſor granted; for it behoveth not that his proper name be in the Deed, &c. *T:* 20 E: 3. *Annuity* 53.

So it is of a Duke, &c. for the name of Dignity was ſufficient certainty, and the name is not put to other intent, but for certainty of the perſon, *Perkins* 8.

The Plaintiff in an Aſſiſe of Rent made Title by Deed, which was, *Sciant*, &c. *Quod ego O. conceſſi pro me & hared: meis*, to be bound to *B:* in forty ſhillings, *ſolvend: ſibi, de Manerio meo de D: annuatim, &c. quamdiu nos tenemus manerium prædict.* and the Aſſiſe was awarded upon the Title, *M.* 14 *E.* 2. *Grants* 92. but a Grant by a ſirname alone is not good, by *Perkins* 8.

Hank: ſaith, If land be intailed to me by Fine, by the name of *J.* and after he is confirmed by the Biſhop by the name of *T.* yet he may well execute it by the name of *T.* and ſhall maintain the Grant *per nomen* &c. See 22 *R.* 2. *Brief* 936. See of this matter, 9 *E.* 3. 13. and 18 H. 6. 34.

Moile and *Aſhton* Juſtices, ſay, If the Parſon, Patron and Ordinary grant an annuity out of the Church of Saint *Peter* and Saint *Paul*, where in truth the Church is founded onely in the name of Saint *Peter*, the Succeſſor of the Parſon may well avoid this Charge, and ſo *è contra* 35 H. 6. 5. *Warrant of Atturney* 3.

An Advowſon paſſed to *J. S.* by grant, and that he ſhould name at every avoidance, and no other ſhould be preſented, 24 E. 3. *Quare Impedit* 26. See of ſuch Grant, 14 *H:* 4. 11. 1 *H* 5. 2. and 14 E: 4. 2. 19 E: 3. *Quare Impedit* 154.

See 1 *Aſſ:* 11. and 3 *Aſſ* 4. where land was given to *R:* and *S:* his wife in tail (where indeed this wife had to name *I.*) the Remainder to the right Heirs of *R.* who died without Iſſue on *I.* his Daughter of the firſt wife entred, *I.* and her ſecond husband put her out, and ſhe brought an Aſſiſe, and upon the truth found, ſhe had Seiſin by award of the Court; Afterwards *I:* and his wife had execution by *Scire facias* againſt the wife by default, who brought an Aſſiſe, and it was fonnd as before; yet the the opinion was againſt the Plaintiff becauſe the Fine was not defeated, but being lawfully executed by due proceſſe of Law, ſhould not be defeated by ſuch a way. And *Scorpe* ſaid, That the wife might have eſtopped the Heire, by ſaying ſhe had to name *I:* by the Fine of the Anceſtor, being the ſame perſon.

And *Scrope* ſaith, That a woman ſhall not take any thing by the Feoffment to the husband and her, if ſhe be miſnamed, notwithſtanding the Livery be to them both, 3 *Aſſ:* 4.

A man

A man may well claim a House, Mill, Toft by the generall name of a Carue of Land, 4 *E*:3.47.

Note by *Hank.* for Law, If Land be given to a man and *B.* his wife in speciall tail, where her name is *A:* yet this is good in all, by reason of the Livery, and 1 *H*:5.8. *acc.* So saith *Hank.* of a Feoffment to a man, & *uxori sua*, not naming her name, 1 *H*:5.8.

XIV. *Where a Grant made without Deed is good, and what things shall passe without Deed, what not.*

NOte, the Wardship of the body and land may well be granted over without Deed, *H*:12 *E*:3.*Grants* 59 25 *E*:3.3. And the Grantee devised it by Will, and the Devisee in a Writ of Ward brought against him, need not shew the first Deed, nor the Will, 26 E:3. 11.

Note, where the Lease is not traversable, as in Ravishment, or Ejectment of Ward, or Forfeiture, the Deed needeth not to be shewed, 14 E: 3. *Action upon the Statute* 17. So in an intrusion of a Ward, 22 *R*.2.*Brief* 937.

And by Deed the Lord may grant the Wardship before any Seisure made *per Curiam*, 11 *R*:2. Counter-plea of Voucher 35. But it is holden there that the Grantee of the Wardship shall not vouch without shewing a Deed, for the mischief that the Lord might grant it every day to a severall man, for the Grant is good without livery of the Ward, ; so there ought to be a specialty of such speciall Voucher, and see 46 E:3.25. and 25 *E*:3.3. contrary.

Note, that the remainder passeth by Livery made to the particular Tenant, and therefore he need not to declare upon the Deed in *Formedon* in the Remainder, 10 E:4.1. *Grants* 24.

See 18 *H*: 8. 3. That a man cannot make Title by Remainder, by way of Bar, without shewing a Deed of the Remainder, if it hath not been executed in him.

So the Heir of the Grantee of a Reversion in tail shall have a good Formedon in the Discender against the Abator upon the death of his Father, *&c.* without shewing a Deed of the Grant, because it is executed, 11 H:3.37. See a good case, 8 E:3.33. The same Law of an Advowson in grosse, if the Grantee hath once presented 11 *H*:4.3.

A Rent may be well granted by one Parcener to another, upon equality of Partition without a Deed: And the Baily shall avow upon the Feoffee of him who granted it without the shewing the Deed, 2 *H*.6.14. *Avowry* 3. 45 E:3.21. 8 E:3.16.

An Advowson may be well granted without Deed by Livery, 43 E:3.1. 26 H.8.2. 5 *H*.7.37. by *Vavisor*, and 8 *H*:7.3.*contra*.

Note, that the Grantee of the Reversion may well distrain for the rent, although

although he hath not a ſpecialty of the Grant, having Attornment of the Tenant, 42 *E*:3.4. and 2 E:3,14. ſuch a Grantee brought Intruſion after Attornment, and good, *vi*:6 E:3.40.15 E:4.18. ſee contrary, 10 E:3.9.

A Stream was demanded in the land of another without a Deed, and well, for it was ſaid, that the Soile ſhall be recovered, 8 E:3.13.

It is ſaid, that the Veſture of the land ſhall paſſe without Deed, becauſe it ſhall paſſe by the Livery, 17 E:4.6. by *Littleton*: But *Brian* ſaith, That it paſſeth by Grant as a Term, ſo without Deed, 3 *A*:6 13.5 H:7.10.

Tythes by themſelves do not paſſe without Deed, but if the whole Rectory be granted for years without Deed, this is good, and the Tythes ſhall paſſe alſo, 21 H:7.21. *Choke* ſaith, that a Leaſe of the Tythes without Deed is good, 9 E:4. *Feoffments* 92.

Yet if the Ter-tenant and the Grantee of a Rent-charge make a Feoffment joyntly of the land, the rent ſhall not paſſe by it without a Deed, 14 H:7.4.

A Uſe may well be ſold without a Deed, 7 E:4. *Subpœna* 5. *Perkins* 14.*acc.*

If a man deviſe land for life, and wills that his Executors ſhall ſell the Reverſion, their ſale ſhall be good without Deed, 19 *H*:6.23.

Note, that a Villain in Groſſe, Common, Rent, Reverſion, *&c.* paſſe not without Deed, becauſe not by Livery, 6 *H*:7.3.

Starkey ſaith, That a Termor of a Villain may grant parcell of his land without Deed. which *Brian* denied, and ſaith, that he cannot no more then the Leſſor who cannot grant a rent reſerved upon a Leaſe for years for parcell of his Term, 20 E:4.16.

Note by *Catesby*. A man cannot leaſe a Warren without Deed, nor grant a Preſentment *Pro hac vice* without Deed, which is but a Chattell, 9 E:4. *Feoffments* 92.

The gift of Corn growing is good by word, although they are not ſevered in the life of the Grantor: So of Trees, if the Grantor be not Tenant in tail of the land, 18 E:4.22. *Perkins* 13.

XV. *Where the Grantee may grant the thing over, and where the Heire ſhall not be bound by the Grant of his Father, of a thing in which he hath Fee.*

Note, If a Parſonage or Vicaridge be chargad with an Annuity, he who hath the Annuity may grant it over: But if an Annuity be granted to me *Pro conſilio, &c.* I cannot grant it over; No more then if he grant me to be his Steward, or Parker: But a Way, or Common in groſſe may be granted over.

He who hath an Annuity by Preſcription may grant it over, becauſe it is an Inheritence, and it is not a thing meerly in Action, by *Thorpe*, 41 *E*:3.27.

Catesby

Catesby agrees, 21 *E*:4.10. But *Brian* ſaith, 22 *E*: 4. 18. That an Annuity which is not an Inheritance ſhall not be granted over, nor a Corody incertain, nor Eſtovers incertain, nor a Liberty grant to the perſon, as to ride my Horſe, 22 *E*.4 6.

A Warranty granted to me by the King cannot be granted over, nor the Office of Carver, *&c. Catesby* ſaith, That a Common without number may be granted over, 21 E:4 84. 36 *Aſſ*.3.

A man ſeiſed of a Common in groſſe, granted it in fee, the Grantee granted it over before any Seiſin of it, and a good Grant, 36 *Aſſ*:3.

Common was granted to the husband and wife, and to the Heirs of the Husband, who dyed, the Heir granted the Common to a ſtranger, the wife died: And the opinion of the Court was, that the Grantee ſhould not have the Common, as *Fitz*: in his Abridgment, the cauſe is not expreſſed, wherefore the Grant ſhould not be good, for it was a Common without number, 34 *Aſſ*:14. *Grants* 94. ſee 27 *H*: 8. 10. And note, if it may ſtand with the reaſon there for to grant ſuch Common over.

No Office of Truſt can be granted over, 39 *H*:6.34. 11 *E*:4.1. 21 *E*:4 20. and 84.

If the Lord who hath a Mill and Suit of the Tenants of the Mannor, grant over the Mill and the Suit of the Tenants, and the Grantee is ſeiſed accordingly, yet it ſhall not bind the Heir, but he ſhall have againe the Suit, if he make a new Mill, 19 *E*:2. *Aſſ*:399.

Note, that Common, or a Way may be appendant to a houſe, or onely to arrable land, as it is holden, 27 *H*:6.34. ſee 22 *H*:6.43. but ſuch Way, or Common cannot be ſevered without Deed, but Common appurtenant may be to him who hath not the houſe, 9 H:7.7.

Tenant at Will cannot grant over his Eſtate, by *Brian*, 22 E: 4. 6. So Divine Service cannot be granted over, by *Rolfe*, 9 *H*: 6. 13. But Maſſes and Matines reſerved upon Feoffment were granted over, as is 4 E:3.51.

XVI. *Where a man may grant the Reverſion of Tenant in Taile, or of him who holdeth but for life of the Leſſor.*

NOte, That the Donor may grant the Reverſion of Tenant in tail, and ſo may the King, and for theſe matters of Record, the Reverſion is in the Grantee without Attornment, 12 E:4 3.3 *E*:3. *Per quæ ſervitia* 17.26 *Aſſ* 66.

So that Reverſion in *Eſſe*, but if land be given to two, and to the Heirs of one of them, he who hath the Fee cannot grant it over there. Alſo it is there ſaid, That if a man make a Leaſe for life, the Remainder for life, and grants the reverſion of the Ter-tenant, this is void, becauſe it cannot take effect according to the Grant: He who hath but a bare right to a Reverſion cannot grant it over, 12 E:4.3.

A man

A man makes a Lease for his own life, and granted the Reversion by Fine, which at length was recorded, yet the Reversion is to remain to the Heire, and not to him 9 E:3. 14. to E:3. 49. 42 E:3. 18. that such Lessor shall have Waste, and shall enter for the forfeiture.

Where a Grant doth enure to two Entries, which shall be taken, and when both shall be taken.

IF the Donor grant the Services of Tenant in tail, not speaking of the Reversion, yet they passe, and he shall be driven to attorn, 3 E:3 *Itin. North. Per quæ servitia* 17.

See 12 E:4. 3. Where *Catesby* held such a Grant void, because the Services shall not be severed from the Reversion, and the same shall not passe from him, no more then if he grant the Homage of the Tenant in Knights service, reserving the other Services, but 66 E: 3. 26. it is admitted that the Grant of the Services of the Tenant in tail is good.

A man grants Common for ten beasts *in pasturis suis*, to go with his Beasts. And in Avowry for damage-feasance, no regard was taken, used to put his Cattell in the place where, *&c.* 11 E:3. *Common* 10.

Of Common granted, *ubicunque*, and *quandocunque*, *&c.* see 9 *H:* 6.

A man grants Common, *&c. infra metas*, and bounds of the Common of *D.* now if there be a place which is his severall, and another place which is common to others, that shall be only, by *Hill*, 15 E: 3. *Common* 12. 41 *Ass.* 22. Where it is *infra metas & bounades de D.* not of the Common of *D.*

Note, that upon a generall Grant of Common, a man shall not have Common, but for Cattell Commonable, not for Hogs, 9 H: 6. And in Land which is the most convenient for Common, not in a Garden, *&c.* 2 *R.* 2.

A Rent service which I have in *D.* shall not passe by the Grant of all my Annuities there, by *Prisot*, 33 H:6. 34. 19 H:6. 4.

XVII. *Where the Tenant of the Land cannot charge the Land by his Grant with Common, &c. during his Estate, where according to his Estate.*

A *Skue* saith, If I grant you leave to take so many Fish in my Fish-pond, as you will spend in your house; I may well make the like Grant to another, *&c. Falthorpe* not so, for if I grant you Common for a hundred Sheep, I cannot Common there to another, unlesse you have sufficient besides that which I grant to the other, so in the first case. *Paston* denied that, 18 *H:* 6. 30.

The Abbot and Covent, reciting by their Deed, *Quod cum nos tenemur Priori, &c. in 4 marcis annuis secundum quod patet per quandam compositionem, &c. in dicta compositione non inseritur, ad quem terminum, nec ubi dictus redditus solvatur, Noverint, &c. Quod nos permittimus & tenemur solvere, &c. ad festum sanctæ Trin. apud B.* And it was adjudged in a Writ of Annuity that the Abbot should be charged by that Deed, without shewing any thing of the Composition, and although there were no composition as it there seems, *P*: 16 E: 3. *Grants* 54. *vel* 55.

Note, one Tenant in Common of a Wood, cannot grant to a stranger to cut Wood, or to agist his Cattell, but after the death of such Grantor the other shall have an Action for the whole, and shall recover his damages 45 E: 3. 13. *Grants* 48.

The charge of one Joynt-tenant is good, if he do survive, 10 E: 3. 34. 17 E: 2. *Charge* 15.

A man seised of a Term in the right of his wife, grants a Rent-charge and dieth, the Charge is determined, and the wife shall hold the land discharged, although she hath paid the Rent after the death of her husband, 7 H: 6. 2. 9 H: 6. 52.

The same Law, if the Issue in tail pay a Rent granted by his Father, or the Grantor himself after the Term for which it is granted; and the Alinee of the wife shall take advantage of that matter, and it is void, although it was granted for Divine Service, so *quid pro quo*, 9 H: 6, 52.

Cotesmore saith, If the elder Brother dieth, his wife young with Child, and the younger Brother entreth and charge the land, that by the birth of the Issue, the same shall be avoided, *&c.* 9 H: 6. 52.

If a man grants a Rent-charge, and afterwards his Mother recovereth Dower against him, and the Sheriff assignes her that land, she shall hold it discharged, 10 H: 6. *Charge* 3.

Note, if the Conusor charge the land mean between the Statute acknowledged, and the execution sued, that the Conuzee shall hold it discharged, *T*: 14 E: 3. *Charge* 11.

The charge of the Tenant shall stand good against the Guardian in Knights-service, during his time, 3 E: 3. *Itin*: North: 176.

XVIII. *Where the Grant is good by reason of use in the thing granted by the Statute of* 1 R. 3. *Cap.* 1.

IF a man be seised to the use of a woman of an Advowson, and she take husband, he and his wife may well grant it, and it shall be good during the Coverture, as if they themselves had been seised of it, in the right of the wife, 6 H: 7. 3 *Grants* 39.

A. enfeoffeth *B.* to the use of *C.* for life and after his death to the use of *D.* and the Heirs of his body, *C.* may well enter and make a Feoffment, and *B.* shall enter after her death; so *D.* may well make a Feoffment,

ment, and after his death *B.* may enter, or the Issue, according to the Statute, for by his death the Feoffment is become as it was at the Common Law, *i.e.* a disseisin to the Feoffee &c. 4 *H.*7.18. *Feoffments* 31.

A Lease made by *Cestuy que use* shall not devest the Reversion of the Feoffees, but the same is in them, and the Termor shall have aid of them, 8 *H.*7.3. and therewith agrees 27 *H.*7.22. and 5 H.7.5.

But if *Cestuy que use* doth not lease c. presently after his entry, this is a disseisin to the Feoffees, and they shall have an Assise, although that the Lease or Feoffment be now made, 5. *H.*7.5.

A Rent-charge granted out the Land, by *Cestuy que use*, is good by the Statute, 5 H 7.6. *B.*

Note, the Feoffees of Land in use of an infant may grant ordinary offices and fees in defence of the Lands, and they shall be allowed at the full age of the heir, but not fees or annuities for life &c. and *Keble* saith, that upon necessity they may grant an annuity *pro consilio*, if there be no profits at the time to defend the title of the Land *&c.* 8 *H* 7.11.

Note, if *Cestuy que use* make a Feoffment to a stranger, and a Letter of Atturney to another to make Liverie, this is a disseisin to the Feoffees and is out of the Statute. So if he devise by will, that his Executors, or *J.S.* shall sell the Land, this is void, for the Statute doth not give that power, but the Executors may well sell the use *&c.* 9 H 7.26.

Grant of Trees or Corn by *Cestuy que use* to a stranger is good, yet he cannot take them, 15 H.7.2. See 14 H. 8.7. and 27 H.8.5 also he may well devise that his Executors shall sell the Trees growing upon the Land, 14 H.22.14.

Cestuy que use sells the Lands, and the opinion that by that the use is presently in the Vendee, and that he may enter and make a Feoffment according to the Statute, yet in hat Case the money was not payed *&c. vide* 21 H.7.6. and 27 H.8.20 and 30.

Where one may grant or sell a thing which he hath not, and where not, and yet by possibility he may have it.

AN Abbot, Parson of a Church sold to *T.* all the Corn tithable, within the Parish during seven years, and good, as if he sell the tithe of lambs at the Feast of Christmass before *&c.* So if Tenant for life sell the profits of his Lands for two years to come, 21 H 6.43. *Grants* 40. *Perkins* 80. See the book, for a difference was taken betwixt a Sale and a grant, or Lease, or that the sale isnot so executory, also betwixt a Sale for the present year, and for two years to come, yet all was awarded to be good, and that the Sale is a Grant in it self, as the Sale of profits of Court to come &c.

The Earl of *L.* granted a ward *&c.* and granted by the same Deed,

that if he die within age, his Heir being within age, that the Grantee ſhould have the heir of him, and ſo *de hærede in hæredem*, till ſome Heir came of full age, afterwards one *T.* who held of the Earl in Knights ſervivce died, his heir within age, after the Ward died within age, another Infant being his heir, yet it was agreed that the Grantee ſhould not have the Wardſhip of him, but the Earl might well hold the Ward, 24 *E.* 3. 3. *Grants* 65.

The Lord granted to his Tenant, that he ſhould do his ſuit of Court due at his Mannour of *D.* at his Mannour of *S.* for the eaſe of the Tenant, by that the ſuit due before, is not extinct but yet the Lord may have it when it pleaſeth him to demand it, and the other ſuit is not but in allowance, for the ancient ſuit doth not paſſe by ſuch Grant, *E.* 2. *Action upon the Statute* 24.

Treſpaſſe of goods taken, the Defendant ſaid, that the Plaintiff was poſſeſſed and ſold the goods to *T.* who left them in the cuſtodie of the Plaintiff and ſold them to the Defendant, the Plaintiff ſaid, that he was poſſeſſed untill the Defendant took them without that, that *T.* ſold them before, and that was admitted a good anſwer, yet *Danby* ſaid, that if *T.* ſell them to the Defendant after the taking, that this is good, *Moile* ſaith, that ſuch ſpeciall matter ought to be ſhewed, *M.* 2. *E.* 4. 16 *Aſſiſe* 114. *Perkins* 20 See 6 H. 7: 9: where a gift of goods to him who had taken them before, is void, if it be not by Deed, becauſe there is but a Right. *Vavaſour* true, that a man cannot give or extinguiſh a Right by word, whether it be in a perſonall or a reall thing, *Done* 7.

See 11 H: 4: 24. Where a man borrowed ſheep for a certain time, and within the time a ſtranger took away the ſheep &c: and he who had the property in them ſold them to the Treſpaſſer, *Hankford* and *Hill* held, that the wrong was purged by the ſale, as a Releaſe to the ſecond Diſſeiſor, ſo as a generall action of Treſpaſſe *vi & armis* did not lie, *Thirn* and *Culpepper* contrary, *Treſpaſſe* 171. *vide* 9 H. 6. 64. *Paſton.*

A grant of a thing which is in the Cuſtodie of another is good, but if he grant it upon condition, as if he himſelf do recoverit, this is void by *Paſton*, 9 H. 6. 6. 4.

A man may well grant his wooll which he ſhall have for the year to come, the Term not being yet begun, and ſo a man may grant a Rent before Seiſin of it, *Perkins* 20: 37 H. 6: 19:

Rent and Common which ſtrangers occupie and take without Title, may be well granted, *Perkins* 21.

XIX. *Where*

XIX. *What words shall be sufficient to make a Grant, and where a Grant shall be to him who is a stranger to the Deed, and where a Recitall shall make the Grant good, where not.*

THE Deed of Grant was such, *Obligo me tali & uxori ejus filiæ meæ, & hared. de corpore earum, in uno annuali redditu de &c. percipiend. annuatim de manerio meo de C. & obligo manerium meum predict. & omnia bona & catalla in manerio predict. existen. ad districtionem per ballivum Domini Regis*, and the same was adjudged a good Grant to charge the Land, and that by distresse of the grantees, and the naming of the Bailiff is to no purpose, for the King is not to have advantage of it &c. 46 *E.* 3. 18 *Grants* 49. *Vide* 27 H. 8. 17. by Fitzh. Obligo is a good word of *Grant*, vide 40 *E.* 3. 1. 22 *E.* 4. 22. 8 *E.* 4 *acc.*

If a man granted certain Corn &c. to *B.* by such words, *Obligo haredes meos* to the same *B.* in five quarters of corn and barley by the year &c. and because the Heir of the Grantor had payed it before the death of the ancestor, he was put to answer in a writ of annuity upon such a naughty grant, *T.* 31 *E.* 3 *Grants* 85.

In an Assise of a Rent, the Tenant pleaded out of his Fee, the plaintiff for Title shewed a Deed, which was, *Sciant* &c: *Quod ego O. concessi pro me & haredibus meis teneri B.* now plaintiff in &c. *solvend sibi de manerio &c. annuatim, quamdiu nos tenebimus manerium predict.* and shewed that it was descended to the Tenant, and the Tenant did demurre upon the Title, and the Assise was awarded, 14 *E.* 2 *Grants* 92.

An Abbot granted to *J. S. unum toftum* &c. and the Deed was, that *pro hac concessione, idem J. S. renunciavit totam communiam quam cum averiis suis habere consuevit &c.* And it was agreed, that that deed was not worth any thing against *J. S.* because he doth not say, that he hath renounced, also the words of the Abbot are in the first person, and the words of *J. S.* in the third person, so as it is onely the Deed of the Abbot, 9 H. 6. 55. *Feoffments* 5.

Note, that by grant of the Reversions of all Tenants, *tam liberorum, quam nativorum*, all Reversions of all his Tenants passe, as if they had been specially named, *T.* 5. *E.* 3. *Grants* 68.

In an Assise of Rent, the Plaintiff made Title by a Deed, which was, know &c. we *P.* and *E.* his wife, have bound all our goods and all our Lands which we have in the Town of *B* to the Distresse of *J. S* and *J.* his son, and to the Heirs of *J.* to take by the year to them, their heirs and assignes, without saying, at what place or day, yet all was good, 5 *E.* 3. 12. *Assise* 171.

An Abbot granted to *J. S.* a certain Corody and a Liverie everie year for his boy, not naming him, this is good, and *J. S* shall have an Assise of it, but the Assise would not have layen for *J. S.* if his boy had been named &c. *M.* 16. *E.* 2. *Assise* 371: *Thorp acc.* 18 *E.* 3. 2.

It

If the Guardian doth aſſign Dower to the wife by Indenture, and becauſe it is more worth then her Dower, ſhe grants a Rent with clauſe of Diſtreſſe to the Guardian, untill the full age of the heir. *Thorp* ſaith, that the heir at his full age ſhall alſo diſtrain for that Rent, 17 *E.* 3 9. *Avowry* 95. See there that ſuch Grant of the ſecond Husband and wife could not bind the woman.

Aſſiſe of Profits *&c.* he ſhewed a Deed by which *J.* had granted to H. twenty loads of Wood, *quarum prædict* H had ſixteen loads, *ex dono P. patris mei* &c. and although that was falſe, yet the Grant is good for the twenty loads &c. 20 *Aſſ.* 8. *Aſſiſe* 217.

If a man reciting that he hath 20 l. of Rent in *D.* grants 10l. of the 20 l. where he hath no Rent there, the Grant is void, but if it be to perceive the 20 l. his perſon ſhall be charged, 9 H. 6. 53.

A man makes a Leaſe for life rendring Rent, and grants the ſame Rent to a ſtranger, and dieth, the heir of the Grantor entreth, and by his deed confirmeth the ſaid Rent to the Grantee with clauſe of Diſtreſſe, reciting the Grant of the Father &c this is a good Rent-charge, without the word Grant, yet the Rent was determined in Law, but not extinct, by *Hill*, 14 *E.* 3. *Aſſiſe* 109 See 26 *Aſſ* 38

A Grant to diſtrein for ſo much Rent, is good Rent-charge, 9 H. 6. 9. 26 *Aſſ.* 38.

Leſſor for 10 years makes another Deed to the Leſſee, reciting the Leaſe, and he wills that the Leſſee and his heirs ſhall hold the Land for the life of the Leſſor, ſo that he can nothing claim &c. this is good, yet there is no word of Grant, or of Confirmation, 7 *E.* 3. 9.

If *J. S.* reciting by his Deed, that his name is *I. S.* by the ſame Deed grants an annuity by the name of *T. S.* yet this grant is good upon the whole Deed, *Perkins* 8.

But recitall ſhall not hurt a good Grant, as if a woman reciteth by her Deed of Grant, that ſhe is a Woman covert with husband, who is a ſingle woman, yet her Grant is good, 3 *E.* 3. *Itin North eſtoppell* 132. alſo a falſe recitall ſhall not make good a naughty Deed, as if a Feme Covert recite by Deed that ſhe is a Feme ſole &c: 1 H: 5 12. *vide* 4 H. 6. 1.

XX. *Where a Grant of an Advowſon by him who is Parſon imparſonee is good.*

AN Abbot Parſon imparſonee, granted the ſame Church with the aſſent of the Covent before the Statute of *Marlebridge* to another Abbot with all the Right which he had in the Advowſon of the ſame Church, it was holden a good grant, for the Advowſon of the Parſonage whereof he was ſeiſed to his own uſe, *T.* 16 *E.* 3. *Grants* 56.

An Abbot Parſon imparſonee leaſeth the Church, with all the profits

fits and appurtenances, it is good for that of which he was seised, but the Vicarage doth not passe, 17 E.3 51. *Grants* 57.

See C.11.part 10 in Candaces Case.

Herle saith, if the Templers after appropriation to them made had granted their estates to the Hospitallers of S. *Johns*, yet they should not have the appropiation; for the Templers could not grant that to make it an appropriation to another, 3 E.3.11. *Grants* 70.

C.11.part 10. the reason is because none can make appropriation but the King.

XXI. *Where the Grant of the Parsonage makes the Patronage of the Vicarage to passe, where not, and where a Grant of the Advowson of the Vicarage, is good.*

NOte, by the generall Grant of the Church, and of all his Right in the Advowson of the Church, with all the profits and appurtenances made by him who is Parson imparsonee, and so seised of the Parsonage to his proper use, and of the Vicarage as Patron, the Advowson of the Vicarage shall not passe without words, for it is severed from the Parsonage, and not appendant to it, and the Grant stands by it self for that whereof the Grantor was actually seised, 16 E.3. *Grants* 56. 17 E.3.51 & 56.

So of a Recoverie of a Parsonage, if not that the Title of the Action be before the severance of the Vicarage from the Parsonage, 17 E.3.51. and therewith agrees *Berry*, 5 E.2 *Quare impedit* 165.

Vide 16 E.3 *Quare impedit* 145. by *Parning* and *Hill*: The Ordinary cannot make a Vicar without the assent of the Patron, which implies the Patronage of the Vicar, is in the Patron of the Parsonage.

Fortescue saith, that the Advowson of the Parsonage and Vicarage are severall, and each may be granted by it self, and a writ of Right of Advowson lieth of each of them severally, and the one shall pay Tithes to the other, and shall have an action against the other, 31 H.6. 13. *Judgement* 1.

Bass. alledged, that one *J*: did recover the Parsonage against *T*: in a writ of Right of Advowson, and afterwards did recover the Vicarage in another action against the same person, 5 E.2: *Quare impedit* 165.

So two Advowsons of one Church, and the Parson imparsonee hath not the Vicarage as Patron or Ordinary, but as Patron &c: as Abbot Patron makes appropriation &c: 5 E:2: *Quare impedit* 165: a good case, *Vide* 7: E:3: *Quare impedit* 21: 50 E:3 26 and 24 E.3. *Quare impedit* 22. Where it seems the Advowson of the Vicarage doth belong to the Parson.

Vide 17 E. 2. Quare impedit 178. *Where an Abbot who had an Advowson appropriate upon which there was a vicarage endowed, and presentation to the Vicarage.*

Vide 31 H:6:13: The Vicar is but as substitute to the Parson, and his endowment at first was onely for the ease of the Parson, and the chief care of souls lieth upon the Parson, and it belongs to him to see the cure served with a sufficient man; and therefore it seems reasonable, that the Patronage of the Vicarage do belong to the Parson, and not to the Patron of the Parsonage.

A man

A man by Fine grants a Parsonage (saving the Presentation to the Vicaridge to him and his Heirs) so as he and his Heirs present the Vicar to the Grantee, a Prior and Successors, and so from Vicar to Vicar, and admitted a good Fine, *Fitz.* And so it seems the Vicaridge had passed, if it had not been reserved, 2 H: 3. *Grants* 89 *F.N.B.* 33. *b.*

XXII. *Where a Grant shall be good for a greater Estate then the Grantor hath, and where it shall be good for ever.*

NOte, If Tenant by the Curtesie granteth a rent by Fine, and dieth, this Fine shall be well executed by *Scire facias*, if he in the reversion hath not defeated it, by entry into the land, whether the rent happen in the time of the Tenant by the Curtesie, or otherwise, *&c.* 31 *E:* 3. *Grants* 60.

If Tenant for life granteth a Rent-charge in fee, and dieth, he in the Reversion entreth and confirmeth it with clause of Distresse, this is good, because the Charge took effect at the time of the Grant, and is not defeated by Judgment before the Confirmation, 14 *Ass:* 14. 14 E: 3. *Assise* 109. 26 *Ass* 38.

Vi: 11 H:7 28. The Confirmation is good, for that which I may defeat by Entry, or otherwise, I may make good by Confirmation.

Vi. Lit: 131. *pl:* 331. 529. *C:* 1 *part*, *Mayowes* case, 147. *C: Lit:* 300. *ac.* In respect of the Grantor, the rent is distinct by his death, and if the Distrainor of the Rent be not expressed in the Deed, the Confirmation had not enlarged it, nor made it absolute.

Grantee of a Rent for term of life, grants it over in fee, this is good against the Ter-Tenant, if he cannot prove that Estate defeated by the seisin of him in the Reversion, after, *&c.* 14 *E:* 3. *Avowry* 117.

44 E. 3. 31. *Octavian Lumbards case, & vi* 44 *E.* 3. 33

Tenant in tail grants a Rent charge in fee to him who hath an ancient right for his Release, *&c.* this is good, and shall bind the Issue, 44 E: 3. 32. *Charge* 7. See of this matter, 24 E: 3. 8 H. 6. 23 20 E: 4. 13. and 6 E: 3. 56.

Tenant in tail of a Reversion grants it in fee with Warranty, the Tenant attorns, and surrendreth unto the Grantee, this is a Discontinuance, and a bar with Assets, 32 E: 3. *Discontinuance* 2.

Tenant in tail grants an Advowson, the Church void, he dieth, the Grantee shall have the Presentment, and not the Issue in tail, 9 *E:* 3. 10. *Quare Impedit* 28.

XXIII. *Where*

XXIII. *Where Services shall passe by the Grant of the Rent.*

WHere the Tenant holdeth by Fealty and Rent and not by Homage, the Fealty shall passe by the grant of the Rent, *Perkins* 33.44 *E*:3. *ac.*

And so saith *Thorp*, 29 *Ass*:20. But it is agreed there, that if he reserve the Seigniory, the Grantee shall have but a Rent-seck, and therewith agrees Mr. *Littleton* in his Chapter of Rents, and *Perkins* 23.

XXIV. *Where the Grant of the Patron and Ordinary without the Parson is good, to charge the Church, and where of the Patron and Parson without the Ordinary, and where of the Parson alone.*

NOte, that the Patron and Ordinary may charge the Church in perpetuity in the time of Vacation of the Parsonage, 31 E: 1. *Grants* 90. 2 *R*:2. *Annuity* 53.

P:22 *Eliz*: *in Co*: *B*: by *Mead* and *Periam* Justices, The Parson with the consent of the Patron and Ordinary, might grant parcell of the Glebe land, to hold of the Parson, and therby make the Parsonage a Mannor, and so they may charge the Glebe with their common consent in perpetuity.

Also the Church shall be well discharged by the release of all Annuities made to the Patron, *&c.* *P*: 8 *E*: 3. *Release* 57. 15 *H*:7. 21 *H*:7. 41. 7 E:3 21.

The Parson and Patron cannot charge the Church without the Ordinary, 38 E:3. 5. *Charge* 5.

But the Parson alone having *Quid pro quo* may well charge the Church in perpetuity, 16 *E*:3. *Annuity* 24. see 12 *H*:4. 4. 8 H:6. 23. *Vi. C. Lit.* 347. 5 E. 6. *Dyer* 69

If the Parson, Patron, and Ordinary grant an Annuity, and afterwards the Parson and Patron lose in a *Quare Impedit*, yet the charge doth remain good, because they had a lawfull possession, 9 H:6 33. *vi. C. Lit.* 300. *b.*

But *Chantrell* saith, That if he who recovereth in a *Quare Impedit* against the Patron alone, put out the Incumbent, and he and his new Presentee grant an Annuity, and the old Incumbent re-enter, he may well avoid that charge, which *Paston* denied, 9 H:6. 33.

XXV. *Where the Grant of a Prior, Abbot, Biſhop, or body Corporate, &c. is good, without the aſſent of the Covent after Reſignation, where without the Chapter, &c. and where with them, and where not: And where it is void by Reſignation.*

ANnuity againſt an Abbot, the Plaintiff counted of the Grant of the Predeceſſor, who hath reſigned, and is yet in life, *&c.* The Defendant ſaith, That the Predeceſſor was a Dilapidator, and thereof accuſed by the Monks, and a Suit for deprivation of him depending in the Arches, he granted the Annuity to the Plaintiff, to maintain him, *&c.* and when he ſaw, that Judgment would paſſe againſt him, he reſigned, *&c.* yet upon the Demurrer it was adjudged that the Plaintiff ſhould recover, H: 29 *E*: 3. 21. *Grants* 99.

It ſeems by *Thirn.* That he who hath Sequeſtration of the profits of the Church by a Writ of execution to the Biſhop upon a Debt, recovered, and before the monies are levied, the Parſon reſignes, *&c.* That he ſhall hold the Lands againſt the Succeſſor, for being diſturbed by him, he had a *Sicut alias* to the Biſhop, 13 H: 4. 20.

An Aſſiſe of Eſtovers againſt the Biſhop of *Coventry* and *Lichfeild*, Title made by Grant of the Predeceſſor, and Confirmation of the Prior and Covent of *Co.* The Defendant ſaid, That the Biſhop of *Coventry* and *Lichfeild* time out of mind, *&c.* and at the time of the making, *&c.* was choſen by the Prior and the Covent *de Co.* and by the Dean and Chapter of *Lichfeild*, which aſſent is not alledged, Judgment, *&c.* and they were at Iſſue, If he who granted was choſen by the Prior and Covent alone, or by both, *&c.* in the time of *R.* 2. *Grants* 164.

A Prebendary made a Leaſe for years of a Mannor, the Tenant attorned, he reſigned, the Leaſe was preſently void. and the Succeſſor did avow for rent which was due during the Term, 11 H: 4. 16.

If a Parſon ſoly grants a Rent-charge, and reſignes, the Glebe ſhall not be charged for ſuch charge, is good, but during the time that he is Parſon, and not during his life, *Perkings* 7. If a Dean grant a Rent-charge out of the Land which he holdeth in Common with the Chapter, this is good to charge him and his beaſts with diſtreſſe, but not the beaſts of the Chapter, *ibid.* If an Abbot charge by Fine, and is depoſed, yet the poſſeſſions ſhall be charged, not if he charge by Deed, *Perkins* 7. although that the Deed be enrolled, 13 *E*: 3. *Itin. Cornub. Abbe.* 23.

But ſee 5 *E*: 6. *Dyer* 69. If a Parſon make a Leaſe for years, or grant a Rent-charge to begin after his death, if the Patron, Ordinary, confirm it, it ſhall bind the Succeſſor, *vi*: 19 *Eliz: Dyer* 357. *acc.* And ſee 40 *E*: 3. 30. 16 E: 3. *Annuity* 24. *C. Lit.* 343. If the Parſon with the aſſent of the Ordinary grant Annuity, and have *Quid pro quo*, in conſideration of it, it ſhall bind the Succeſſor of the Parſon, though the Patron did not conſent to it.

XXVI *Where*

XXVI. *Where a Grant of Annuity or Rent shall be severed by the words,* Percipiendum, *and where by the first words in the Deed; And where parcell of the Land shall be discharged, by words subsequent, or by recitall.*

UPon debate betwixt a Prior and Abbot for two Churches, Composition was made by the Ordinary the Bishop, that the Abbot should have the Churches, and should grant unto the Prior four marks Annuity for one Church, and two marks for the other, all which was accorded unto with the assent of the Covent. The Prior brought Annuity as of four pounds of Annuity, and the Deed was to take four marks for one Church, and two for the other: and yet it was well brought, for being upon one Deed, it is but as one entire Annuity: As if *A*: grant *B.* an Annuity of twenty shillings, to take ten shillings, of such a Mannor, and ten shillings of such a Mannor, yet this is but one Annuity, and shall be demanded by one Writ, 29 *E*:3.51. *Grants* 101.

Assise of a rent, the Plaintiff claimed it as a Rent-charge, and shewed a Deed, which was, That *I.S.* granted unto the Plaintiff twenty shillings of rent to take in his Mannor of *M.* so much by the hand of one Tenant, and so much by the hand of another, and this was found, and that the Tenants were Tenants at Will; and at last Judgment was given for the Plaintiff, as of one rent issuing out of the Mannor by the Premisses of the Deed. 15 E:3. *Charge* 9. 15. *Ass*:11.

But see opinion contrary to that, 7 E:3.9. Where a man granted a rent in his Mannor of *D.* to take so much by the hand of such a Tenant, and so much by the hand of such, that now the Mannor is not charged, but the Tenants shall be distrained with Attornment. As a grant of a Rent in the Mannor to take in such an acre of Meadow, nothing shall be charged but the Meadow, which was agreed, where I grant a rent without limiting Estate, this is for life, but if he say further to take for ten years, he hath but an Estate for years, *&c. vi.* 5 *E*:3.66. *Assise* 132.

A man grants a rent out of an acre of land in the Tenure of *B* to take of *B*: and his Heirs with distresse, in his Mannor of *D*: and adjudged that yet that acre doth remain charged with Attornment of *B*. and so a Rent-service made a Rent-charge,. *M*: 1 E: 21. and 27 *Ass*:169. *Vi. C.* 7 *part, Butts case.*

And this word *Percipiend.* and how the Charge is limited by it, see 9 H 6.13. and 50 *Annuity* 4, and 5.

A man grants a Rent to husband and wife of four pounds, and if she survive that she shall have forty shillings, yet it was adjudged, if she do survive she shall have also 4. pounds, because there is no Negative word, that she shall have forty shillings and no more, and that the remnant shall cease, 8 E:3.13: *Assise* 143.

15 *H.*7.14. Three Coparceners make Partition, one Grants a Rent to the other two for equality of partition, this Rent is in the nature of Coparcenary, and if one dye the Rent ſhall not ſurvive, *vi:* 2 *H:*7.5, *C.*5. *part* 8. *acc.*

Where a Rent is aſſigned to two Parceners, by the third Coparcener, for equality of Partition, *&c.* ſo much to one, and ſo much to the other, yet it is but one Rent, and one Writ lieth for the two againſt the third Parcener for the whole Rent, 29 *Aſſ:* 23. *Partition* 12.

Vi. 29 *Aſſ: Joynder in Action* 18. *ac.* 38 *E:*3.26. *C:*5. *part* 8. If two Coparceners make a Feoffment, rendring Rent to them and their Heirs, their ſeverall Heirs ſhall inherit, becauſe their Right is ſeverall, yet but one Rent.

XXVII. *Where by Grant of Land or other things, the Grantee ſhall have many things, advantages, and liberties which are implyed in the Grant.*

NOte, the Law is *Quando quis aliquid concedit, etiam id Concedere videtur ſine quo res ipſa eſſe non poteſt, t. E.* 1. *Grants* 41.

If a man grant to me to convey a Conduit Pipe through his Cloſe, *&c.* if afterwards it be ſtopped, I may well dig the land to amend it, although it be not expreſſed in the Grant, for otherwiſe he cannot have advantage of the Grant, 9 E:4. 35. *Action upon the caſe* 18.

Vi. 13 *H.*8. 15 14 *H.*8.2. *Plo Com.* 16. *ac.*

So by grant of Trees, *&c.* it is implied in the Grant that I ſhall come upon the land with Carts, *&c.* to carry them away, but ſuch ſpeciall matter ſhall not be implied but for neceſſity, and that to be done without great damage to the other. As a man ſells me all the Fiſh in his Pond, I cannot dig the land to take them, becauſe there is another means to take them, ſo no neceſſity. Alſo if he grant me Trees which cannot be cut without falling upon his houſe, ſuch cutting is not lawfull. So if he grant me liberty to dig in all his lands, I cannot dig under his Hall, ſo as it fall, *&c. per Perſey*; & *Knivet* ſaid the contrary in the laſt caſes, but of the Fiſh it was adjudged as *Perſey* ſaid, *M:*2. *R:*2 *Bar* 237.

If a man be ſeiſed of a Mannor with an Advowſon appendant, and grants over an acre *& advocationem Eccleſiæ*, or *una cum advocatione Eccleſiæ*, the Advowſon paſſeth as appendant to the acre, 13 *H:*4 *Grants* 88. So of a Grant of a Rent parcell of a Mannor to which, *&c.* 5 *E:*3: 30.

Grantee of Common, *ubicunque averia* of the Grantor jerint ſhall have Common, where the beaſts of the Grantor were put for Common after the Grant, although that now he hath no beaſts, 9 *H:*6 *Common* 2. 11 *E:*3. *Common* 10. That ſuch a Grant ſhall be taken as it hath uſed to be put in execution.

A Rent

A Rent-service shall not passe by Grant of all my Annuities in *D.* by *Prisot*, 33 *H*:6.34.

A man sells a Wood except forty of the best Oakes, at the election of the Plaintiff to take and carry away within two years; Now if the Grantor wil not in convenient time, and upon request to him made elect them, the Vendee may well appoint them, and cut them down for him, *M.* 44. E:3.43.44 E:3.28. *acc.*

He who grants to me to be acquitted against *R.* and his Heirs of Services, *&c.* shall acquit me against the wife of *R.* Tenant in Dower of the Services, 31 E:1. *Mesne* 55.

XXVIII. *Where a Grant shall be sufficient to charge Land, &c. and by what words, and where to charge his Inheritance, or the person, or the Inheritance of another.*

NOte, That he who is not actually seised in possession or reversion, can never charge the land: And therefore he who acknowledgeth a Fine, and retakes it by a render, cannot by that render charge the land, 7 E:3.14. *Fines* 83.2 E:3.8.

Also the Conusee cannot reserve a rent upon the render of the land, 9 E.3.6. which is not Law; But the Conusee by Fine may well grant a rent to the Conusor by the same, *&c.* for the Fine doth suppose him seised before, 4 E.3.41.19 E 4. 2. and 19. *vi.* 19 *E*:4. 2. and 4. the Prior of *Morton*, and Prior of *Binghams* Case.

Vi. 19 E:4.2. *& 4. the Prior of Merton and Prior of Bingham's case.*

Also the Feoffee by Indenture where the Feoffor reserves rent, may grant by the same Deed, that the Grantor shall distrain, yet the Feoffee is not seised at the time, 7 E.3.19.

But if a man grant a rent out of the Mannor of *D.* whereof he hath nothing at the time, this is void, 14 E.4.31.10 E.3.49. although he purchase the Mannor afterwards, otherwise if such a charge be by Fine, *Perkins* 15: *vi. Fitz:t. Estoppell* 107. *acc.* If the beasts of the Grantor come upon the land, the Grantee may distrain them, by *Horton.*

Schard saith, That *apud*, *in*, and *de*, are sufficient words to charge a Freehold, 29 *Ass*:23. *Partition* 12.

And so saith *Hussey*, 19 *E*:4.8. But he saith, That (*pro*) is no word to charge land, and therewith agrees *Schard* in the Case before. As if I grant *B.* twenty shillings of rent *pro* such land, it is no Rent-charge.

For the word (*Apud*) see 41 E.3.15.

For the word (*in*) 15 E.3. *Charge* 9. 7 E:3.9.

For the word (*de*) 22 *Ass*.66. *De molendino.*

Percipiend. de me & heredibus meis, that is of me, *&c. in Molendino*, by those words, the Mill is charged, 46 E.3.18. *de Manerio.* See more of (*in*) and (*de*) 14 E.3.55.

The

The Land ſhall be charged by a Grant to diſtrain, 9 H: 6. 9. 26 *Aſſ*: 38. by *Skipwith*.

See C. 7. part in Butts caſe &c. A man grants a Rent iſſuing out of ſuch an Ox-gang of land *percipiend* by the Tenant, with clauſe of Diſtreſſe elſewhere, yet the Ox-gang is charged, 2 E: 3. 21. 5 E. 3. 66. *Aſſ*. 169.

Obligo terras in B. ad diſtrictionem pro, &c. is a good charge, 4 E: 3. 44. *Avowry* 165.

So *Conceſſi teneri I. S.* in, *&c.* 29 E. 3. *Aſſ*: 366.

A Feoffment made, untill the Feoffee levieth ſo much money, good, and he ſhall retain the land for the charges.

A man grants the Services of *B*: his Tenant, with Diſtreſſe elſewhere, yet after Seiſin the Tenancy is charged. And ſo ſhall the Aſſiſe be brought, 2 E. 2. *Aſſ*. 160.

Vi. 19 E. 4. 4. *Brian.* Alſo a Grant to charge land, *&c.* ought to refer to certain land, place, and thing, *&c.* As if a man grant me Common, and doth not ſay, in what place, *&c.* it is void, 9 H: 6. 39 But a grant of Common *ubicunque averia, jerint*, is good, 9 H: 6. 9. and 36. But he who claims ſuch Common ought to alledge in fact, that the Cattell of the Grantor were depaſtured upon the land, whereof, *&c.* at the time of the Grant, or before, or after; and therefore becauſe he did not do ſo, a Repleader was awarded after Verdict, 9 H: 6. 36. *Repleader* 8.

Grantee of certain land, *&c. cum communia in Brueris & Moris, &c.* brought an Aſſiſe as of Common in groſſe, and took nothing, by reaſon of the noncertainty, 15 E: 3. *Aſſiſe* 111. 15 *Aſſ*. 5.

A man grants Common *infra metas & bondus* in ſuch a Town: And by the opinion of *Hill*, none of his ſeverall lands ſhall be charged by ſuch generall grant, if he hath other lands uſed as Common, 15 E: 3. *Common* 12. 14 *Aſſ*: 22.

A Grant of a Rent ſhall be good to charge the perſon where the Premiſſes of the Deed is a perfect Grant, and the *percipiend.* is to charge the land, or another thing which the Grantor cannot charge: As if a man grant to me ſuch a rent, *percipiend.* of ſuch a Mannor, Land, or Tenement, *&c.* where in truth he hath no ſuch, *&c.* his perſon ſhall be charged: So if he recite that *I. S.* his Tenant doth pay him twenty ſhillings *per annum* rent, and he grants to me ten ſhillings *percipiend.* of *I. S.* where in truth he hath no ſuch Rent, his perſon ſhall be charged; and if he hath ſuch a Rent, it ſhall be a Rent-ſeck with the Attornment of *I. S.* But if he grant to me ten ſhillings of the ſaid twenty ſhillings, where he hath no ſuch, this is void. ſee 9 H: 6. 13. and 53 *Annuity* 45.

Partition being made between Parceners, where the one is married, and her husband for equality of partition doth grant a rent to the other, this is good, and ſhall bind the perſon and Inheritance of the wife, the partition being equall, 29 *Aſſ*: 23. *partition* 12.

If a man ſeiſed of a Mannor grant a Rent-charge out of it, *Proviſo*, that the Grantee ſhall not charge the Mannor, the ſame is good, but

but he may charge the Perſon, but if the *Proviſo* be that he ſhall not charge ſuch a parcell of the Mannor, it is a void *Proviſo*.

17 *Aſſ.* 10. If a Rent be granted out of a Mannour *percipiend.* in 20 acres of it, this limitation doth not diſcharge the Mannour: ſo if the Grant were out of 20 acres, *Proviſo* that he ſhall not diſtrain in 10 acres, if the *Proviſo* be, that he ſhall not charge the Mannor, nor any thing but the twenty acres onely of the Demeans, the ſame is void; for where the Mannour is diſcharged, the demeans alſo are diſcharged, *vide* [*Plow: cojitat.* 229 *acc.*

If the Tenant grant unto his Lord to pay him twenty pounds for relief when it ſhall be due, *&c.* this is good to charge the Tenancy, 3 *E:* 3.13.

XXIX. *Where a Grant of a Rent to him who is Tenant of the Land, is good; and where he ſhall take it by way of Grant, and where he may grant the ſame Rent over.*

A Woman ſeiſed of Land charged with a certain Rent, took husband, and had iſſue two ſonnes, the Husband purchaſed the Rent in Fee, and granted it to the younger ſonne in Tail, and the opinion of *Chantrel* and *Herle* (as *Fitzh.* abridgeth the Caſe) was, that the Grant was not good, becauſe he was entitled to the Freehold of the Land at the time of the purchaſe, and he himſelf was never actually ſeiſed of the Rent, and ſaid he had not a Seiſin of which the wife ſhould be endowed, but had ſuch a Seiſin whereof a Formedon in the Reverter would lye for the Donor, if the Caſe were ſuch, and if he had purchaſed the ſame Rent before the enter-marriage, the Grant had been good, becauſe it was once executed in him by an actuall Seiſin by *Chantrell*, 5 *E.* 3.16. *Formedon* 42.

If the Lord grant his Seignorie to the Tenant, and a ſtranger, yet it ſhall enure by way of extinguiſhment for one moiety, by *Perkins* 18. and therewith agrees *Littleton*, 34 *H.* 6.41. and *Yelverton* here ſaith, that all is extinct.

Lord and two Joint-tenants are, the Lord grants his Seignorie to one of them, it ſhall enure by way of Grant for the whole, by *Perkins*, *Quare.*

So a Grant of a Rent-charge, where he was once ſeiſed of it, 5 *E.* 3.17.

The Grantee of a Rent-Charge may well grant it over before actuall Seiſin, 36 *Aſſ.* 3.

An Aſſiſe of a Rent againſt the Feoffee of *T.* who granted it, he did alledge the grant of the Father of the Plaintiff who was grantee for life, of the ſaid Rent to his Feoffor who granted it, and the Aſſiſe awarded, becauſe he was Tenant at the time, ſo ſuch a Grant was not good by the opinion

opinion there, 3 *E.*3. 12 *Aſſiſe* 171. 3 *Aſſ.*7 *Aſſ.* 184. *Littleton contr. Confirmation fol.* 37.

XXX. *Where the Grant of a Rent ſhall be enlarged by Confirmation after, or Releaſe, and where the Confirmation ſhall make a new grant.*

A Man makes a Leaſe for life rendring Rent, and grants over the rent to take a Tenant for life, and dieth, the Tenant dieth, the heir enters and confirms the Grant of his Father, with clauſe of Diſtreſſe, this is good, 14 *E:*3. *Aſſ.*109. 14 *Aſſ:*14. 26: *Aſſ.* 38. *Aſſiſe* 241,

A man reciting a Grant of his Father of ſuch a Rent to *B.* for life, he confirms it, and further if the ſaid Rent be behind he grants to *B.* by the ſame Deed that he may diſtrain &c. this is good, and *B:* ſhall have an Aſſiſe of the Rent upon it, without ſhewing the Deed of the Father, 18 *E.*3: *Monſtrans de faits* 170.

A woman ſeiſed of a Rent-ſervice grants it over, and dieth before attornement, the Tenants deliver a pawn unto the Grantee by way of attornement, the heir doth releaſe to the Grantee all his Right, and upon that matter, and Seiſin and diſſeiſin found, the Grantee did recover in an Aſſiſe againſt him who releaſed *&c.* 16 *E.*3. *Aſſ:*74, If he was but Pernor at the time, the Releaſe is worth nothing by *Littleton*, 15 *E.*4. 8:

A man granted a Rent to *D:* for term of life out of certain Land, the remainder to *R.* for life, and afterwards releaſed all his Right in the ſaid Rent to *R. &c. Et ſi contigerit dictum redditum &c. bene licebit Prefato R. Hæred: & aſſignatis ſuis diſtringere in terris pradict. &c:* it was adjudged that this is a good Fee by the laſt clauſe to diſtrein to him and his Heirs, although it be by another Deed, and although there was no Fee of the rent before this Releaſe &c. 8 *H:*4: 18: *Releaſe* 19.

Note, *Littleton* holdeth the contrary of ſuch Confirmation where the Rent was not before Confirmation, and ſaid, there was no difference between Releaſe and Confirmation, as to that intent.

XXXI. *Where by grant of one Executor all paſſeth which is in him and in his Co-Executors, and where one executor may make a grant to the husband of his Co-Executor.*

T. And *M.* Executors of the Conuſee of a Statute Merchant ſued Execution &c: and *T.* granted his eſtate to *N:* husband of *M:* her Co-Executrix, and died, the Husband granted all his eſtate to *H:* and afterwards the husband and the wife of their eſtate made an Indenture to one

one *B:* and delivered him the Statute, but not Seiſin &c all this matter was found, and *B.* entred upon H: claiming ſuch eſtate, and that others are Tenants of the Freehold not named *&c:* and it was adjuoged that H: the Plaintiff ſhall recover; for when *B.* doth enter without Title he ſhal be ſaid Tenant by Diſſeiſin againſt the diſſeiſee &c. 42 *E.* 3. 9. *Aſſiſe* 130.

XXXII. Where the Grant of a Rent, the Remainder to another in Fee out of Land &c. is good, where a Grant to two the Remainder to one of them.

A Man grants a Rent out of Land, the remainder over &c: and good, and afterwards releaſeth in Fee, all is good, 8 H. 4. 18. *Releaſe* 19.

It is ſaid that a Remainder may be well granted over of a Rent, which was not before, becauſe all as one Grant, but a Reverſion of ſuch a new rent cannot be granted over, becauſe he hath not ſuch reverſion, 15 *E:* 4 *ac.*

A Rent was granted out of Land to two and to the Heirs of one of them, and good, *Quare* if he which hath the Fee may grant it over living the other, 3 *E:* 3. 12: *Aſsiſe* 171: *the ſame Caſe.* 3 *Aſſ:* 7: *Aſſ.* 184:

A Remainder to the Donee in Tail ſhall not veſt untill the Tail be ended, and therefore the ſiſter of the half blood ſhall have it, and not the unckle of the ſpeciall iſſue, who was ſeiſed, 37 *Aſſ:* 4: 7 H: 4: 23:

See 11 *E* 2: *Fines* 123: That a Remainder may be well of a Rent which was not, but the ſame ſhall not commence by Fine:

Of the Remainder to the right heirs of a ſtranger, and where the younger ſon ſhall have the Remainder as right heir, before the iſſue of the eldeſt Son, who dieth before it falleth, See 7 H: 4: 7: *Avowrie* 49.

A man grants to another to be meaſurer of his Land, and by the ſame Deed grants the ſame Office to another to occupie after the death of the firſt Grantee, this is good, and yet there was no ſuch Office nor grant before, 30 *Aſſ.* 4. *Grants* 41.

XXXIII. *Where a Grant ſhall be determined by the act of the Grantor, or at his pleaſure, although it be eſtate of Free-hold, and where at the pleaſure of the Grantee, although it was of an eſtate of inheritance.*

A Man granted Land to *T.* for life *dummodo ſolvat* 12 Marks *per annum* to the Leſſor, and bringeth an Aſſiſe of the Rent, yet this Freehold is determined at the will of the Leſſee, *Aſſiſe* 172.

So of 2 marks of Rent granted untill the grantor pay him 10 marks *ceſt*, is a freehold conditionall, but if the grant be untill the grantee hath levied 10 marks this is but a leaſe for five years, 33 *E.* 3. *Aſſiſe* 327. and 33. *Aſſ.*

15. *verdict* 42. But ſee there, that ſuch condition found by Verdict, although it was for an Infant, where the Deed was an abſolute Grant for life, was holden of no effect, but the Aſſiſe remained to inquire if there was a deed of it.

A man grants a Rent to his Son out of ſuch Land, and dieth, the Land deſcends to the Son, who brought Debt againſt the Executors of his his Father, and well, for it was at his Election to have it a Rent or an annuity, 45 *E.*3. *Executors* 71.

The Diſſeiſee accepted the Land upon an agreement in the Country, upon condition that the diſſeiſor be bound to him in a Recogniſance, and that being pendant the Aſſiſe did abate it, if not that the diſſeiſor might enter for the Condition broken, and had re entred in fact, 10 *E.* 3.50. *Aſſiſe* 163.

A Feoffment made to the wife, the Husband being beyond Sea, was utterly defeated, and deveſted by the diſagreement of the Husband at his return and refuſall to take the Profits, *Perkins* 9. 15 *E.*4.1. by *Littleton.*

XXXIV. *Where a Grant of the Leſſor during the Term of Trees is good, &c. Where not.*

IN Waſt by an Abbot for cutting down of Trees againſt Tenant for life of the Leaſe of *M.* his Predeceſſor, the Defendant ſaid, that the ſaid Predeceſſor gave the ſaid Trees to a ſtranger, for which the Defendant cut them down, and delivered them to the Grantee, and that was holden no Plea by the Court, for the Grant is nothing worth, if the Predeceſſor had not cut them down, or commanded the Tenant to cut them down, alſo if he plead the commandement, he ought to alledge the ſame executed in the life of the Grantor, otherwiſe it will not ſerve, 21 *H.*6. 46. *Waſt* 53.

If the Leſſor command his Leſſee for life to dig gravell &c. this is void, and he ſhall have Waſt for the digging, notwithſtanding the Commandement, for he himſelf had nothing to do in the Land, during the life of the Leſſor; but *Bryan* ſaid, that ſuch Command to fell tres, ſhall be good, for the Trees do belong unto him, 2 *H.*7.14. 11 *H.*4.31.

XXXV. *Where the Grant of the husbad and wife during the Covert ure ſhall bind the wife after by the Deed, and where they do not grant by Fine, and where it is void againſt the wife.*

THe Guardian aſſigns Dower to a woman now Covert, by Indenture: and the husband and wife grant to him a Rent out of the ſame land, And it was adjudged, it ſhall not bind the wife, becauſe it is not ſpecially re-

recited in the Deed, that the land is more worth than her Dower, and that that rent is granted for equality, 17 E:3.9. *Avowry* 95.

A man acknowledgeth a Statute unto husband and wife, who render him a rent, *&c.* and it was not recovered, becauſe the wife ſhall not be examined in ſuch Fine, 5 E:3.24. *Fines* 45.

The husband and wife having a uſe of an Advowſon in the right of the wife, may well grant the ſame, but it ſhall not bind the wife after the death of the Husband, 6 H:7.3. *Grants* 39

Note, where husband and wife, Leſſees by Indenture, make a Covenant touching their Eſtate which doth not bind the perſon, nor the Inheritance of the wife, but onely the land leaſed, *&c.* the ſame ſhall bind the wife agreeing to the Leaſe after the death of the husband, as a Covenant to pay rent for the land, and to double the rent for default of payment, *&c.* But a Covenant that they pay twenty pounds upon a paine, &c. or that the Leſſor ſhall have ſuch aſſurances for the rent as he will deviſe, or that he ſhall diſtrain in the land of the wife, and the like, ſhall not bind the wife after the death of the husband, 45 E:3.31.

A man covenants with the husband and wife that he will levy a fine to them, and they covenant by the ſame Deed to render back the land to him, &c. the ſame ſhall not bind the wife, 15 E:4.29. *vi.* 44 E:3.33.

Husband and wife Lords in the right of the wife, upon compoſition with the Tenant, change the Services for Rent, or other Services, this is good, becauſe the wife hath *Quid pro quo*, 10 E.3.23.

XXXVI. *Where a Grant of Annuity made by two ſhall be one Grant.*

ANnuity againſt *R:* the Arrearages of an Annuity by him granted unto the Defendant for life, and ſhewed the Deed, which was, That *R:* and *W.* bind themſelves untill promoted unto a Benefice: And the Deed was, *Obligamus nos & utrumque noſtrum*, and doth not ſay, *in ſolido*, yet all was good againſt *R.* alone, and at laſt iſſue was taken upon the ſufficiency of the Benefice.

XXXVII. *Where a Grant of the Lord ſhall change the Services in him and the Tenant, and part ſhall be new Services, and where he may grant to make another thing for it.*

THe Lord grants unto his Tenant for his eaſe, he ſhall do his Suit which is due a: his Court of *C:* at the Court of *B:* this is a good excuſe for the Tenant, but by that the Suit at the Court of *C.* is not determined, 3 *E:*2. *Action ſur Statute* 24. So *Berry* ſaith there, if upon agreement I take two ſhillings *per annum*, for my Suit there, and be ſei-

ſed of the ſame rent for forty years, yet the Suit is not gone, but I may have it again when I pleaſe.

A Seigniory diſcends to two Parceners, which take husbands, one hath iſſue, and dieth, and upon compoſition between her Husband, their Son, the other Parcener and her Husband, and the Tenant, the Services are changed of part for other Services, and in part for rent, and ſeverally aſſigned to the Tenant by the Curteſie his Iſſue, and to the other Parcener, and now a Coſin and Heir to the Iſſue of one Parcener; and alſo of the other Parcener make entire Avowry for the whole, and good: But after the Plaintiff did demur, becauſe they did not allidge Seiſin of the new Services, which were in lieu of the others, and did not begin with the Tenure, for which the Heir ought to alledge Seiſin of them, by *Parn. quare* 10 E:3. *Avowry* 238.

Avowry upon a Prior for a hundred ſhillings for relief, becauſe that the Predeceſſor held of the Anceſtor of the Avowant by Knights-ſervice, and upon debate he upon the aſſent of the Covent granted to hold by the ſame Services, and further to pay a hundred ſhillings for relief at every avoidance, and levied Seiſin &c. and good, yet there was no clauſe of Diſtreſs in the ſpecialty, for it ſhall be intended Service, &c, 20 E:3. *Avowry* 124.

The Lord confirmes the Eſtate of his Tenant to hold by a pound of Pepper for all Services, *Pro ſervitio & homagio ſuo*, and grants over the Seigniory, the Grantee cannot avow for fealty: It was ſuch that ſuch Homage lieth in privity. Alſo *Wilby* ſaith, That he ſhall not avow for the leſſer Services reſerved, 26 E:3 16. *Avowry* 246.

See a good caſe, 14 H: 4. 18. That this is good, although the Tenant had nothing at the time.

LEET.

LEET.

1. *What things may be enquired of in the Leet.*

IN a Leet, a man ſhall enquire of Paines, and of thoſe who are put in Decineys, and that cannot be in the Sheriffs turn, 18 *H*:6. 13. *Leet and Hundred.* 1.

The not uſing of Faires or Markets, according to the Grants of the King, &c. ſhall be enquired of before Juſtices in Eyre, or in the Sheriffs Turn 22 *H*:6 14. *Action upon the caſe* 11.

All Felonies and petit Treaſons which were at the Common Law, are inquirable in the Leet, or in the Sheriffs Turn, but of the death of a man, 7 H 6.13. by *Cotteſmore, Leet* 10 22 E:4.22.41. *Aſſ*: 30. Where the Lord and Steward of a Leet were amerced for inquirage of the death of a man.

Felony given by Statute which was not at the Common Law, is not inquirable in a Leet, but where the thing done was at the Common Law, and greater puniſhment is given by Statute, ſuch thing ſhall be enquired of in the Leet, as it was at the Common Law: As the killing of his Maſter ſhall be enquired of as Felony, and Rape, as Treſpaſſe, for the King himſelf cannot uſe a Leet otherwiſe then it hath been uſed, nor by the ſame reaſon grant to another to uſe it otherwiſe, 8 H:7.4 *Leet* 3.

A man was amerced in a Leet for not cleanſing his Ditch; and it was alſo awarded that he ſhould be diſtrained to amend it after, and upon default the Lord ſhould avow for that pain ſo ſet *P*:29 E.3.36.

He who hath a Ferry is bound to uphold it, ſerve it, and repair it, and this is enquirable in the Sheriffs Turn, or before Juſtices in *Eyre*, by *Newton*, 22 *H*:6.14.

The property of a Chattell preſented in the Leet or Hundred, by preſcription, 39 E:3.35.

See the Statute *de viſu Franciplegio An*. 18 *E*.2. *Raſſall Leet* 1. Of Apparell according to the Statute, 24 *H*:8. *cap*:13. *and* 1 *and* 2 *Phil. & Ma. cap*:2. Of Apprentices, 7 *H*:4. *cap*.17. Artificers, *An*. 2 *E*.6 *cap*:6. Of Shoomakers, Tanners, &c. *An*:2 *E*.6. *cap*:9. Croſs-bowes, *An*: 33 *H*: 8. *cap*:6. Crowes, *An*:24 *H*:8. *cap*:10. Fiſh, *An*: 1 *Eliz*:*cap*:8. High-waies, 2, and 3. *Phil*:and *Mar*:*cap*:6. Hunters, 14 *H*:8 *cap*:11. Maſters 1.

II. The Order of the Leet, and when it ſhall be holden, and who ſhall be ſworn there, and of two manners of Leets.

A Leet may be well holden, at any place within the Precinct of the view, &c. But a Court Baron ſhall be holden in a place certain, by *Brian*, 8 *H*:7.4. *Leet* 4.

Generall Leet which was by the Common Law, ſhall be holden twice every year, by *Portington*, 18 *H*:6.12. *Leet* 1. But *Brian* ſaith, That the Leet ſhall be holden but once in the year, by the Statute of *Magna Charta*, 8 H:7.4.

Suit at the Leet is for cauſe of Reſiancy, and that ſhall not be at two Leets, but well at the Leet and Torn of the Sheriff, for there many things are enquired of for default of the Leet, 18 *H*:6.13.

My Feoffee of parcell of my Mannor, yet ſhall do Suit at my Leet holden within the ſame Mannor, by *Stone*, 40 *E*:3.19.

Note, if a man hath a Leet which hath been holden at a day certain, if he will change the day, and hold it at another, this is void, and without warrant: Otherwiſe it is of a Court Baron, as it is ſaid, 38 *H*:[illegible]7. *Leet* 2.

Note, by the opinion of the whole Court, that every man ſhal be in ſome Leet, and ought to come thither by reaſon of Reſiancy, as well the Servant as the Maſter, &c. 2 H:4.16. *Leet* 5. 18 H:6.12.

Newton ſaith, If a man be riding where the Leet is holding, the Steward for want of Jurors may compell him to be one of the Jury there, 7 H:6.13. 3 H:7.4. But by *Thorp* in a Leet and Hundred, the Lord ſhall make the Freeholders to be ſworn, notwithſtanding the Statute of *Marlbridge*, *cap*: 22. 39 E:3. 35. *Leet* 6. but ſee 44 E:3. The Lord of a Leet ſhall cauſe the Suitors to be of the Jury, which ſhall not be in a Hundred, *quod nota*, 44 E:3.19.

In a Leet or Hundred, if a man will not be ſworn, he ſhall be fined, and the Lord may impriſon him untill he hath paid his Fine, and he ſhall be amerced and diſtrained for the Amercement, 31 *H*:6. *Leet* 11.

The Prior of *S*. who dwelt within the Leet of the Abbot of *Ramſey*, did preſcribe to be warned to the Leet by fifteen daies, to ſit there with the Steward, and to have the Fines and Amercements of his Servants and Tenants within the ſame Leet. Note there, that the Abbot did claim it by Preſcription to hold a Leet once a year, *ſ* at the time of *Eaſter* ſuch a day, &c. *M*:38 H:6.16. *Action upon the caſe* 15.

If I be ſeiſed of the appearance of one at my Leet, although that in right he is to be attendant at another Leet, this Seiſin doth give me Title in a *Quo warranto*, *H*.32 *E*:3. *Avowry* 112. and H:10 E:3.8 *Avowry* 155. by *Stone* 4 E:3.31.

The

The Lord of a Mannor may well have a Leet within his Mannor: So he who hath not a Mannor may well have a Leet there, and ſhall enquire of Nuſances, &c. but ſhal not meddle with no Waſte in the Mannor, 4 E:3. 10.9 H:6.44.

The Feoffee of the Lord ſhall do Suit at the Leet, notwithſtanding the Deed of Feoffment be to hold quit for every manner of Demand and View, for the Lord cannot diſcharge him from the Law, &c. 7 E: 2. *Avowry* 211. And ſee the contrary adjudged, 8 E:2. *Avowry* 112. and that he ſhall be diſcharged of Suit at the Leet by ſuch Feoffment of the Lord, *Pro omnibus ſervitiis, ſectis, & demandis.*

III. *The Authority of the Steward, and of the Lord of the Leet, or of the Reſiants.*

REplevin of Goods, the Defendant did avow as Lord of ſuch a Mannor, where he had a Leet, &c. becauſe that the Plaintiff had ſtollen them, and driven them through the Town, and Hue and Cry being raiſed upon him, he waived them, and fled to the Church: And it was holden no plea for the Plaintiff, to claim property, without anſwering to the waiving as before, 29 E:3.38. *Avowry* 253.

The Lord of a Leet may impriſon him who will not be ſworn, untill he pay a Fine, and amerce him, and diſtrain for the Amercements, *M.* 31 *H:6. Leet* 11.

A Tythingman who will not preſent, may be amerced by the Steward by uſage, *&c.* and the Suitors may be amerced by him, for not doing of their Suit, by *Newton*: But *Chauntrell* ſaid, The Amercement muſt be aſſerted by the Suitors, 10 *H:6.7. Ley* 5-

C.8. part 38. *Greſlers* caſe, *ac.* 10 E:3.8. *Avowry* 155. *C.11 part* 43. *Godfreys* caſe *ac.* 4 *Eliz: Dyer* 211. *ac.*

Note, the Tenants in a Leet may make By-lawes by aſſent amongſt themſelves, and the ſame ſhall bind them: As that he who puts his Cattell upon the Common before ſuch a day ſhall forfeit, *&c.* Alſo the Lord of a Leet may preſcribe to have a certain ſumme of money for every Fray and bloodſhed, and to diſtrain for the ſame, and to ſell the Diſtreſſe, *M.* 21 H:7.40. *Preſcription* 67.

The Baily may diſtrain for a thing done in the Leet in the High way, 34 E:1. *Avowry* 232.

IV. *How*

IV. *How the Amercements forfeited ſhall be levied, and what ſhall be cauſes to amerce, &c.*

ONe *J*: was amerced by the preſentment of the chief Pledges, for that he had kept with him one *W*: above a year and a day, who was not put into the Decenery, this was holden a good cauſe, and the Amercement well levied upon the Beaſts of others taken in the laud of *J*. and in his Cuſtody, *M*:41 *E*:3.26. *Avowry* 65. See there he ought to remain continually within the View for a year and a day.

See that for an Amercement in a Leet, the Lord may diſtrain, 13 E:3. 12.*b.C*.8 *part* 34. *Greiſleys caſe*. *Vi*.*F N*.*B*. 100. 47 E:3. 13. He cannot diſtrain the beaſts of a ſtranger as the Amercement in a Leet.

Not appearing at a Leet is a good cauſe to amerce a Reſiant, and the Lord who diſtrains for the Amercement needs not ſhew for what he diſtraineth before the Tenant hath tendred him ſomething for amends, although the Tenant doth not know the cauſe, 45 E:3. 9. *Avowry* 80. *Vi*. 11 H:4.89.12 *H*:7.15.

If a man be amerced for a thing done in a Town wherein he dwelleth, he may be diſtrained for it in any place within the Hundred, or Leet, 11 H:4.88.

Seiſin had of Suit at my Leet is a ſufficient cauſe to amerce ſuch a Suitor afterwards, although of right he oweth Suit at another Leet, *&c*. 32 E:3. *Avowry* 112.

A Suitor at a Leet may be amerced for not preſenting things preſentable, being ſworn with others, and a generall Avowry good, but he may ſay, that there was nothing to be preſented, 10 E:3. 9 *Avowry* 155. 10 *H*:6,7. *Lib*:*C*. *Entries t*. *Det*. 149 *C*:8:*part*, *Grieſleys caſe &c*.

Seiſin of Leet is ſufficient cauſe to avow for an Amercement there, although he hath no Title, nor Mannor there, 4 E:3.10.11 *H*:4 88. 8 E:3. 11.

A Reſiant amerced for not cleanſing of his Ditch, and a pain levied upon him that he cleanſe it after, and a Diſtreſſe taken for not doing of it, *&c*. 29 E:3. 36.41 E:3.26. *&c*.

An Abbot was amerced at the Sheriff: *Turn*, for not repairing of a Cawſey, which he ought to repair, &c. The Abbot in Avowry for it ſaid, that the Cawſey was in the Lordſhip of the Earl of *A*. and in his Mannor of E: where he hath a Leet, in which the defects of the ſaid Cawſey have been preſented, time out of mind &c. and not in the Turne of the Sheriffs before name, &c. And upon the Demurrer, he recovered damages, *P*: 29 E:3.27. *Avowry* 247.

Reſiants and Tenants may be amerced in the Leet for refuſing to ſwear 38 E:3.18. *Conuſance* 23.

The Lord of a Leet ſhall not preſcribe to amerce the Petit Jury, for their

their falſe Verdict, the ſame being found by the Grand Jury, for it is no good Cuſtom; but they may be amerced for concealing of any thing which is preſentable there, and this is by Cuſtome, *M:* 9 *H:*6.44. *Cuſtome* 1.

An Amercement in a Leet may be well levied by an Action of Debt, 12 *R:*2. *Ley* 43. 10 H. 6.7.

V. *Where one Leet ſhall be within the Precinct of another Leet, and where one ſhall do Suit at two Leets.*

Forteſcue ſaith, That he hath known where a man hath had a great Leet within his Lordſhip and another had a Petit Leet within his Manor, which is within the ſame Lordſhip, *Curia negavit*, becauſe a man ſhall not be compelled to come to two Leets for his Reſiancy, 18 H:6.13. *Leet.* 1.

Yet ſee 13 E:3. *Leet* 7. holden by *Ald.* and *Schard.* That he who is Reſiant within the Precinct of my Leet, yet he ſhall do his Suit at another View, *&c.* And my Reſiant may be compelled to do Suit at another Leet within my Lordſhip by Seiſin had, 32 *E:*3 *Avowry* 112.

A man claimed a Leet by reaſon of a Mannor which was within the Precinct of another Lordſhip who had a Leet, and in truth that by which he claimed was but a houſe and land, and no Mannor, but by uſage, *&c.* 4 E. 3. 10.

VI. *What differences are betwixt Leet, and the Sheriffs Turn, and what things ſhall be enquired of in the Sheriffs Turn, and what there for default of the Lord of the Leet.*

SEe for this, 18 H. 6. 13.

The Stile of the Turn is *Viſus Francipledge, Domini Regis, tent. tali die, &c. Forteſcue* ſaith, That by the Statute of *Magna Charta, cap.* 35. They ought not to enquire of no Popular Action, *Ad turnum tent: poſt Paſch.* but onely ſhall have View, *ſi Theothinga ſit integra*, but at the Torn of S. *Michael, &c.* 31 H:6. *Leet* 11.

If the Lord of a Leet do not enquire of things inquireable, and puniſh them, the Sheriff in his Turn ſhall enquire of them, and ſhall puniſh them, and in his default the Kings Bailiff or Juſtice in Eyre: But the Lord ſhall have the Amercements upon enquiry had before the Sheriff, or before the Juſtices in his default, *M:* 10 H:4. 4. *Leet* 13. ſee 28 E. 3. 95. the default ought to be alledged.

He who hath a Faire or a Market, is bound to uphold it, otherwiſe he

ſhall be grievouſly amerced, and this is enquirable before the Sheriff, or before Juſtices in *Eyre*, *M*: 22 H:6.14. *Action upon the caſe* 11. So of a Ferry there.

VII. *Whether a Leet may be parcell of a Mannor or Hundred, or appendant to a Chappell.*

NOte, by *Davers*, *Townſend*, and *Brian*, that a Leet may be parcell of a Hundred: And *Brian* ſaith, That it may be parcell of a Mannor, as it hath been adjudged, 8 H:7.3. *Leet* 4.

A Leet may be well claimed by reaſon of a houſe and land, but not as appendant to a Chappell or Church, 10 E:3.5.4 E:3.10.

A Leet claimed as appendant to a Mannor, was holden good, 13 E:3. *Leet* 7. and therewith agrees 4 E:3.10.

VIII. *How Preſentments in Leets ſhall be traverſable.*

NOte, *Schard* ſaith, That if a thing be preſented at the day in a Leet, this is as Goſpell, if it paſſe that day without being repealed: And therefore if a falſe Preſentment be made, he ſhall have an Action of falſe Impriſonment the ſame day againſt the Preſentors, but if he ſtay untill another day, it is otherwiſe: And he who is amerced there for Purpreſture, or other Nuſans in Avowry for the Amercement he ſhall traverſe in no point. *Wilby*, If it be preſented that he hath levied a Ditch over the high-way, if the Preſentment be falſe, he ſhall have Treſpaſſe againſt him who throwes it down by force of ſuch Preſentment: And ſo of my houſe abated by reaſon of ſuch falſe Preſentment, *Hill* 21 *E*:3. *Bar* 271.

He who is amereed in a Leet, may traverſe the Reſiancy. but he ſhall not ſay, that the place where, *&c.* is within another View. 4 E.3.12. 10 E:3.5.41 E:3.26. But if he hath been ſworn in my Leet he ſhall not have the Traverſe, 4 E:3-31.10 E:3.9.

IX. *What things ſhall be enquired of in a Hundred, and how Suit reall may be to the Hundred, and how Suit Service.*

OF Suit reall, at a Hundred, which is by reaſon of Reſiancy, there ſhall be no Acquittall. But if the Lord of a Hundred make a Feoffment to hold to him by Suit, this is Suit-ſervice, and he ſhall acquit him: But ſuch Suits reſerved by Lord after the Hundred granted, ſhall not be forfeited

ſeited to the King by Forfeiture of the Hundred, by *Wilby*. An Enquiry in a Hundred ſhall be of breach of Aſſiſe, and of other things for the keeping of the Peace, *&c.* 4 *E*:3.42. *Meſne* 42.

Schard ſaith, That a Hundred is a thing not enquirable, and cannot be put in view, nor charged, *&c.* 30 *Aſſ.*5.

I. *Juſtices of Peace and their Authority.*

AN Indictment taken before a Juſtice of Peace, of money counterfeit, and the like, is not good by the generall Certificate, that is to ſay, *Coram T. &c. Juſticiar. ad pacem*: But the Certificate ought to be further, *Nec non Juſticiar. &c. ad diverſas felonias, offenſ. tranſgr. & alia malefacta audienda & terminanda.* For the Commiſſion of Peace it ſelf ſhall not be to enquire of ſuch Felonies, 2 *R* 3.9. *Vi.*4 *E.*6. *Dyer* 69. Juſtices of Peace may enquire of Murther; becauſe it is Felony, *vi.C.*8.*part* 68. *C.*4.*part.ac.*

Danby ſaith, That a Juſtice of Peace may make a Deputy to take ſurety of Peace of a man, and by the ſame Precept to give him authority to ſend him to the Goal, if he ſhall refuſe to do it, *T.* 9 *E.*4.30. *Falſe Impriſonment* 4. See there that the Sheriff made ſuch Deputy, and good.

Note, that Juſtices of Peace ſhall take no Appeal, of no Approver, nor of other, *&c.* 2 *E.*4.19. *Juſtice of Peace* 5.

Note, by the Statute of Forcible entry, the Juſtices of Peace have power to enquire of that, and if it be found, to make Reſtitution to the party: And it was ſaid, that one Juſtice only might take Inquiſition in no caſe, if it be not ſpecially given by Statute. *Yelverton* ſaith, That they may record, if any Aſſembly with force be before them at their Seſſions, without preſentment. So if they be diſturbed with force to come to their Seſſions. And it was ſaid, That at the Common Law they might enquire of every Aſſembly with force, but they cannot enquire of an Entry with force before the Statute, 7 *E.*4.18. yet there it is ſaid, that it need not ſpecially be alledged that the Inquiſition of the force was taken at the requeſt of the party.

One Juſtice of Peace hath power to remove the force, where a man enters with force into lands, and alſo he may record that force, and may commit the party to Priſon, by the Statute, 21 H:6.5.

And the party ſhall not have Traverſe to a matter recorded by one Juſtice, 14 H.7,8.

Note, if a Juſtice of Peace aſſemble people to arreſt Riotous perſons, whereof he is informed, he ſhall not be puniſhed for that aſſembling of

them, although not Riot be made, otherwise it is where he supposeth such a Riot, without information, and there is none, &c. And if one such Justice sitting in Judiciall place, as in the Sessions, such one committing a Riot, he by word may command him to be arrested, and may record it, and the other shall traverse it: Otherwise it is upon such Arrest, if he do not sit in Judiciall place, there he shall traverse, it if he made no such Riot, *&c.* And he shal not have trespasse against the Justice, or may make Rescous upon the Arrest, 14 H.7. 8. *Justice* 9. See there, that he shall not have Traverse upon such Record made by two Justices; and their Record shall not serve, but where they themselves saw the Riot, *&c.*

And *Fyznux* saith, That when a Justice of Peace arresteth any man for misdemeanour, &c. he may commit him to Prison without demanding if he will find Sureties, for the other is to tender the same, 14 H.7. 9.

Note, that a Justice of Peace may Arrest a man to find surety of Peace at his discretion, and afterwards let him at liberty, without finding Sureties, and he shall not be punished for the Arrest, because he is a Judge of Record, 9 *E.* 47. A Justice of Peace need not shew his Patent, when he justifies by it, &c. 9 *E.* 4. 2.

Note, Iustices of Peace have not power to assigne a Coroner to one who becomes an Approver, nor to enquire of Treason, 9 *E.* 4. 1. *Justices* 7.

Note, the Constables have power to Arrest a man, and to make him find surety for keeping the Peace, but upon no paine; and if he will not, they have power to imprison him untill he find Sureties, 3 H. 4. 9.

Note, If a Labourer be committed to Prison by the Lord of the Town, or by Justices of Peace for not serving, they have power to command the Gaoler to set him at liberty, for they may commit him upon a suggestion: But where he is committed to Prison by Writ, he shall not be discharged without a Writ *per Curiam*, 14 H. 6. 8. *Labourers* 5.

A Justice of Peace sent his Letter to the Sheriff, to arrest *J.* alledging that he was indicted before him of Murther, by which he arrested him, and carried him to the Iudges, who went to deliver him by the said Letter, without other Indictment against the Prisoner, 3 *E.* 3. *Itin. North.* 360.

I. *Justices*

I. *Juſtices of* Oyer and Terminer, *and their Authority.*

UPon preſentment before Juſtices of *Oyer* and *Terminer*, of a man killed, which is not Felony; as if he fall upon the Fork of another, they cannot let the other to Mainprize, but the Sheriff may well do it, and he ſhall have a Pardon of Courſe upon the Record removed into the Chancery, *Itin. North.* 7 *E.* 3. *Corone* 361.

The Chancellor ſhall make a Charter of Pardon of Courſe to him who kills a man *ſe defendendo*, upon a Writ from the chief Juſtice, certifying the matter, he is bailable, 3 *E.* 3. *Itin. North. Corone* 361.

Note, That before Juſtices of *Oyer* and *Terminer* in Treſpaſſe, if the Defendant put himſelf upon the Inqueſt, he ſhall not have Eſſoin after the firſt day after the Miſe joyned, and they are Juſtices Itinerant, but otherwiſe is it in the Common Pleas, *T.* 19 *E.* 3. *Eſſoin* 173. See the Statute of *Marlebridge*, *cap.* 13.

They cannot enquire of the Raviſhment of an Heir, for that is given by Statute, and ſhall be by Writ onely, but they may well enquire of it as a Treſpaſſe, &c. 29 *Aſſ* 35. *Guards* 20.

But ſee, that they cannot alledge Error in that which they do in ſuch matter, but ought to alledge it to the Juriſdiction before themſelves, 29 *E.* 3. 48. *Guard* 160.

A Juſtice of *Oyer* and *Terminer* is of Record, and therefore where ſuch a Juſtice was indicted, for that he had entred an Indictment taken before him againſt one, as of Felony, where he was Indicted but of Treſpaſſe, the ſaid Preſentment againſt him was holden as void by all the Juſtices, 27 *Aſſ.* 18.

Where the Inquiſition is to enquire, &c. the Juſtices cannot do any thing before Inqueſt taken, &c. 30 *Aſſ.* 5. by *Schard.*

A man ſued Treſpaſſe before the Iuſtices of *Oyer* and *Terminer*, and mean between the Action brought and the Judgment, A new Commiſſion of *Oyer* and *Terminer* was granted through the whole County, yet it was holden cleerly, that the Iudgment of the firſt Juſtices ſhall be good, and all other things by them done, before the ſitting of the new Commiſſioners, and notice to them made; but the uſing of the new Commiſſion ſhall relate to the date of it, but not to make void any thing which was done by the firſt Commiſſioners, 124 *Aſſ.* 8.

Juſtices s

Justices of *Oyer* and *Terminer* through the whole County, may call the Bailies of every Hundred *infra libertates & extra*, and make Inquests of every Hundred, and Grand Inquests of all, and may inquire of extortions, false Imprisonments, &c. 42 *Ass.* 5.

A Commission to enquire of Nusances in the Water of *Lee*, and being in *Middl.* was returned in the Kings Bench, *T.* 19 *E.* 3. *Brief* 279.

Upon a Presentment in *Oyer* and *Terminer*, removed into the Kings Bench, the party shall have his Suit from thence, by *Schard*, *M*, 25 E: 3. 12.

A *Recordare*, which was before Iustices of *Oyer* and *Terminer*, was removed into the Kings Bench for Error And note, the Record ought to make mention before what Iustices the Plea doth depend: And therefore it is sufficient if the entituling at the beginning, be *Placita coram H.* &c. 29 E: 3. 39. *Brief* 907.

I. *Justices of* Nisi Prius *and their Authority.*

NOte, That in Trespasse before Iustices Itinerants, if a man be put in Inquest, he shall not have Essoine at the first day, after issue joyned notwithstanding the Statute, for this is intended before Iustices of the Common Pleas; but the Justices Itinerants of *Oyer* and *Terminer* may take an Inquest at the first day, although that the Defendant maketh default, *T.* 19 *E.* 2. *Essoin* 173.

MESNE.

MESNE.

I. *Where a Writ of Meſne ſhall be maintainable, becauſe of Owelty, and what ſhall be ſaid Owelty, and where Service ſhall acquit ſervice, and more, and where not.*

WHen the Tenant holdeth of the Meſne by the like ſervices, as he holdeth over or more, this is a good Owelty, but not *è contra*, 4 *H.*6.28. *Meſne* 1.15 *H.*6. *Meſne* 2. *Fitz.N.B.* 135.*b.*

Alſo the Tenant holdeth of the Meſne by a penny, and the Meſne over by 12 d. this is a good Owelty for the penny, 4 *E.*3.35. *Meſne* 2. But ſee here, that a Writ of Meſne doth not lie upon a Covenant of acquitter, by *Markham*, nor in no caſe, if the acquitail do not commence with the Tenure, the opinion of *Bill contra*, and that he ſhall not be put to a writ of Covenant, and put the Caſe of Waſt *&c.* 4 E. 2.35. See *Schard*, 14 *E.*3. *Meſne* 7.

Service doth acquit ſervice according to the rate which he holdeth of the Meſne, whether the Tenant holdeth more or leſſe, 4 *E.*4. 11 *H.*4.50. *Meſne* 23. 39. *E.*3.19. *Meſne* 25. 5 *E.*3.11. *&* 50 30. *E.*2.24. *Meſne* 40. Homage doth acquit Homage, although the other Services are not equall, and 13 *E.*3 *Meſne* 7. 5 *E.* 3. 49. *Meſne* 43. and 59. 19 *E.*2. *Meſne* 60.

The Meſne ſhall acquit the Tenant of common Right of the ſervices which the Tenant ought to do him, and over of Right to the Lord &c. 39 *H.*6. 31.

Vide 18 *H.*3. *Meſne* 74. adjudge that the Meſne ought to acquit the Tenant againſt all Lords Paramount, *vide* 29 *E.*34. *acc.*

If the Tenant holdeth in Frankalmoigne, or Frank-marriage, theſe ſervices are cauſes of acquitaile for all Services due to the Lord, 4 *E.*4.35. ſo of Homage *Anceſtrell* 19 *E.*2. *Meſne* 61.

II. *For what manner of Services a man ſhall have acquitaile, and where for all ſervices iſſuing out of Land, and where for all ſervices to every Lord, and where for damages recovered.*

A Man ſhall have acquitaile of all ſervices, becauſe of equality, if not of ſervices, which the Ter-tenant of neceſſity ought to do by reaſon of the Land, as is ſuit real, 4 *E.*3 42. See 9 *E.*3.25.

Alſo of Common Right, the Meſne ſhall not acquit the Tenant, but of Services, which he himſelf ought to do of Right. 39 *H.*6. 21. But ſee there, if the Lord diſtrain the Tenant for ſervices not due, yet he ſhall have a Writ of Meſne againſt the Meſne, if he will not joyn to him &c. and alſo that a Writ of Meſne doth not lie againſt a Deed of Acquitaile againſt all people, if not that he is diſtrained by him who hath a Seignorie in the Land &c. The ſame Law of ſuch Preſcription, but he ſhall have Covenant &c. but ſuch Preſcription againſt all people is void, by *Danby*, to make a binding of aquitaile by Preſcription, and alſo by Frankalmoigne of one entire thing which is double, if not that he relie upon the one, and refer the one to the other, as to alledge the Tenure in Frankalmoigne, and that by reaſon of that the defendant and his anceſtors have uſed time out of mind &c. and preſcription is no cauſe of acquitail, without a Tenure &c. 38 *H.*6. 39. and 30 *Meſne* 4. *Priſoit* ſaith, if Lord, two Meſnes and one Tenant be, the Tenant is diſtrained for the ſervices of the firſt Meſne, he ſhall have a Writ of Meſne paravaile, although he hath done the Services &c. which proves, that payment of the ſervices is not aquitaile for the Tenant, See *acc.* 29 *E.*3 *Meſne* 79. 29 *E.*3:19. Yet it is a good iſſue in a Writ of Meſne, that he was not diſtrained by his default, and the Plaintiff was forced to take the iſſue, 39 *E.*3. notwithſtanding the ſpeciall matter alledged, as before, but that ſpeciall matter found ſhall excuſe him of damages, and he ſhall have a Writ of Meſne againſt his Meſne, who ought to pay to the Lord Paramount, which ſee 17 *E.*3.43. 18 *E.*3 19. a good Caſe, where the Meſne ſhall recover damages againſt his Meſne.

A Writ of Meſne againſt *C.* who by Fine had granted to acquit the Plaintiff againſt *R.* and his heirs, and now he is diſtrained by the wife of *R.* as Tenant in Dower of the Services, and he recovered the acquitaile by award of the Court for the Reverſion of the ſervices did remain to the heirs of *R.P.* 31 *E.*1. *Meſne* 55.

If the Lord diſtrain the Tenant and driveth his cattell into another County, and the Meſne prayes to bring the cattell from thence, ſo that he may deliver the cattell of the Tenant, and put in his own, who will not do ſo, becauſe he may have an action for the driving out of the County, yet he ſhall recover damages for that diſtreſſe alſo againſt the Meſne, for it doth not appear, but that he was diſtrained in his default, and

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Birry asked him, if he would have his Meſne forejudged, 31 *E.*1. *Meſne* 53.

A Writ of Meſne for the Meſne, for the damages recovered by the Tenant againſt him, where the Lord Paramount diſtrained *&c. P.* 20 *E.* 3. *Meſne* 14.

The Meſne doth ſuppoſe that he held of the Defendant by Fealty and Rent, and that he was ſeiſed of the ſervices, the Defendant ſaith, that the Rent was a Rent Seck, and a good plea, although he was alſo ſeiſed of the Fealty &c. *P.* 20 *E.* 3. *Meſne* 13 *E.* 1. *Meſne* 62. *contr.*

A Writ of Meſne doth not lie, but where he is diſtrained for ſuch things which lie in Tenure, 4 *E.* 3. *Meſne* 42. 2 *E.* 2. *Extinguiſhment* 6. as of Rent-Charge, Rent-ſeck, Suit-Reall, and of other things which the Meſne cannot do, nor compell the Lord to take of him, 5 *E.* 3. *Meſne* 43 44 *E.* 3. *accompt* 44. 17 *E* 2. *Meſne* 58.

Homage anceſtrell draws aquitaile for all ſervices, 19 *E.* 2. *Meſne* 61. *&* 20 *E.* 2. *Meſne* 59.

A man grants Land by Fine to hold &c. and warrants him for the ſervices, afterwards the Lord Paramount diſtrains for relief due after the death of the Father of the Conuſor, the Conuſee brought *fine facto* to be acquitted &c. but becauſe the Relief was due before the Fine, which was a concord for things before, the Conuſor went quit, 15 *H.* 3. *Meſne* 76.

Note, it was adjudged that the next Meſne ſhall acquit the Tenant againſt all Lords Paramount, 18 *H.* 6. *Meſne* 78. *&* 29 *E.* 3. *Meſne* 79. where he brought two ſeverall Writs being diſtrained by two ſeverall Lords Paramount, and good.

Where the Tenant ought to do all ſervices for the Meſne, yet if he be diſtrained for a corporall ſervice of the Meſne &c. which he cannot do, but the Meſne himſelf, he ſhall have a Writ of Meſne, 49 *E.* 3. *Accompt* 44.

A writ of Meſne doth not lie for the Tenant in Avowrie, if the ſame be made upon a ſtranger, and not upon his Meſne, or upon the Lord Paramount, &c. 34 *H.* 6. *Avowry* 25. 10 *H* 6. 27.

Note, a Writ of Meſne lieth, if he for whoſe diſtreſſe the Tenant demandeth Aquitaile, hath not a Seignorie in the Land, 9 E. 4. *hors de ſon fee*, 15. 4 E. 3. *Meſne* 41. 27 E 3. *Meſne* 15. 44 E. 3. 2.

Note, that the Meſne who ought to acquit the Tenant, ſhall acquit him of all charges alſo, which are by reaſon of the Tenure, as of aid for marrying the daughter &c. 5 E. 3. 11.

III. *Where Frankalmoigne is cauſe of aquitaile, and where Tenancy in Frankalmoigne is cauſe of aquitail, and where Reverſion &c.*

IN Meſne, a Count, that he is diſtrained for the Services of the Tenant, and that he held in Frankalmoigne, and that he and his anceſtors had acquitted him and his predeceſſours time out of mind, againſt all people, and held ſingle enough, for all is referred to *Frankalmoigne*, and the Preſcription alledged, is but to prove the Tenure, and execution of the acquitaile, but by the reaſon of *Paſton*, this binding is all upon the Preſcription, and the alledging of the Frankalmoigne is void, becauſe he hath not alledged the beginning of the Tenure, as the gift &c. alſo note there, that Preſcription doth not draw aquitaile, if not againſt him who hath a Seignorie in the Land, and not againſt all people, but Frankalmoigne againſt all people &c. 39 *H.*6.30. *Meſne* 4.

Confirmation to hold in Frankalmoigne, is a good cauſe of acquitter of Secular ſervice, not of divine ſervice, 4 E. 3. *Meſne* 41. But that is meant where ſuch Confirmation is by the Donor or his heirs, but ſee 3 E.2. Meſne 36. where by the opinion it ſeems, if a man give parcell of a Mannour to hold in Frankalmoigne, and grants afterwards the whole Mannour to a ſtranger, who confirms the eſtate of the Prior &c. to hold in Frankalmoigne &c. that he ſhall acquit him by *Harvie* Juſtice, although he do not alledge Atturnement in fact &c. and 5 E.2. *Meſne* 64. The Tenant did enfeoff an Abbot, and the Lord reciting that Feoffment of the Land is in Fee, did confirm the eſtate of the Abbot, to hold in Frankalmoigne, and bound him and his heirs to acquitaile, and good &c.

Tenant in Tail may well bind the Donor to acquitaile by reaſon of the Reverſion, but if he do not ſhew a deed, the other may well diſclaim, 8 E.3.26. *Meſne* 19.

But where the acquitaile is dereigned by deed, by Owelty, Preſcription, or Frankalmoigne, or Frank-marriage, or Homage Anceſtrell, the Defendant ſhall not diſclaim, 4 E. 3. *Meſne* 41. *vide* 10 E.3.25.

IV. *Where Preſcription is cauſe of acquitaile.*

PReſcription with Tenure, is a good cauſe of acquitaile, but not againſt all people, alſo if the Plaintiff claim the acquitaile by Frankalmoigne, and further by a generall Preſcription of it &c. the advantage of the Frankalmoigne is waived, and it ſhall be adjudged upon the Preſcription alone,

alone, but if he tax the Preſcription in the uſage of the acquitaile, by reaſon of the Frankalmoigne, now all is referred to that.

That Preſcription is no cauſe of acquitail without Tenure, See 16 *E.* 3. *Meſne* 30. 17 E. 3 *Meſne* 32.

In a Writ of Meſne, the Plaintiff counted, that he held of the Defendant, and that he and his anceſtors have acquitted him and his anceſtors time out of mind &c. the Defendant ſaid, that the Plaintiff hath an elder brother, who hath iſſue *G.* who is alive, and demanded Judgement &c. and it ſeemeth a good plea, although he hath accepted Homage of the Plaintiff, becauſe he doth not bind him by ſuch matter, but by a Preſcription, which he cannot maintain *&c. Tr.* 11 *E.* 3. *Meſne* 36.

Wilby ſaith, that by my deed of acquitter &c. I ſhall not acquit him but of the ſervices, but by Preſcription in the ſame thing a man ſhall be bound to acquit him of that which doth not lie properly in acquitail, as of ſuit to the Hundred, 4 *E.* 3. 42. *Meſne* 42, ſee *Herle* in the end, and by his reaſon the Writ doth not lie of ſuch ſuit by no way &c.

Herle ſaith, that a man ſhall not have acquitaile againſt an Abbot by Preſcription, that his Predeceſſors &c. for their Act ſhall not bind the Church, 4 *E.* 3. *Meſne* 42.

It is a good binding by Preſcription, that the Defendant and his Anceſtors have acquitted him and his anceſtors, and all thoſe whoſe eſtate he hath time out of mind &c. 27 *E.* 3. *Meſne* 15.

A man cannot preſcribe in a *Que* eſtate of the part of the Defendant in a Writ of Meſne, 4 *E.* 3. 42. by *Herle.*

In a Writ of Meſne, the Plaintiff counted that the Defendant and his anceſtors had acquitted the Plaintiff and his anceſtors, and thoſe whoſe eſtate &c. time out of mind &c. they were at traverſe upon the Preſcription, and it was found that the Land was to one *A.* &c. and that the defendant and his anceſtors had acquitted him, and his anceſtors untill the time of the Feoffment &c. and no more, and upon that the Plaintiff did recover the aquitaile, 15 *E.* 3. *Judgement* 133.

A man may well maintain an aquitaile by Preſcription, although in truth he cannot prove the aquitaile in a Writ of Meſne, for it is ſufficient, if the Meſne alwayes did, the ſervices do &c. yet the Plaintiff needeth not to alledge that ſpecially, but the Defendant ſhall plead it in deſtruction of the acquitaile, 5 *E.* 3. 49. *Meſne* 43.

In *Per quæ ſervitia*, the Tenant ſhall not have acquitaile by Preſcription, 4 *E.* 3. 28.

Acquitaile by Preſcription is extinct by a generall attornement unto the Grantee of the Seignorie, 5 *E.* 3. 11. 6. *E.* 3. 19.

V. *Where a Grant by Deed ſhall be cauſe of aquitaile, or to have a Writ of Meſne, where Conuſance in a Court of Record, and where it ſhall bind him and his heirs, and where him onely.*

IF before the Statute he who holdeth by 12 d. make a Feoffment over, to hold of him by a penny, and by the ſame Deed bind him &c to acquitaile, now this Owelty for the penny, and the Tenant ſhall have acquitaile for the 11 d. by the Deed by *Billing*, and that although the deed of acquitail were after the Tenure made. But *Markham* ſaid, that he ſhall be put to his Covenant for ſuch acquitaile, if it do not begin with the Tenure, 4 *E.* 4. 25. *Meſne* 5.

A Woman bound her and her heirs to acquitaile &c. and took husband, had iſſue, the Tenant did releaſe the acquitaile to the Husband and his heirs, the Husband and wife died, the Tenant brought a Writ of Meſne againſt the iſſue, as heir to the wife, and recovered notwithſtanding the Releaſe 38 *E.* 3. 12. *Meſne* 24.

He who acknowledgeth by Fine to acquit me againſt *R.* and his heirs onely, ſhall acquit me alſo againſt the wife of *R.* Tenant in Dower of the Services, 31 *E.* 1. *Meſne* 55.

Note, upon an accord by Fine to acquit, the Tenant may have a Writ of Meſne or a *Scire facias*, but in the *Scire facias* he ſhall not forejudge the Meſne, nor ſhall he have expreſſe judgement to recover the acquitaile, but the Meſne ſhall be diſtrained to acquit him, and if he come not, a *Diſtringas* infinite, 5 *E.* 3. *Meſne* 29.

Conuſance in a Court of Record of acquitaile ſhall bind the Conuſor and his Heirs for ever, without Aſſets, but not a Deed, unleſſe the heir be named in the Deed, and alſo hath Aſſets, 14 *E.* 3. *Meſne* 7. and *Schard* ſaith, there, that a Deed without a Tenure is not cauſe of acquitaile, by a Writ of Meſne, but if there be a Tenure, that ſhall acquit all Services, but ſee 15. *Aſſ.* 9. *Meſne* 44. where Error was aſſigned, for that the heire was awarded to acquitter by the Deed of the anceſtor, where he did offer to averre that he had nothing by deſcent, and without triall of it, the Judgement was affirmed, and the ſame Defendant ſaid, that he had nothing in the Seignorie, and the plaintiff would have eſtopped him, becauſe he had at another time brought a Writ of Meſne againſt his Father, who pleaded, not diſtrained in his default, by which the acquitaile was acknowledged, and he charged &c. and it was holden no Eſtoppell, but againſt the Father himſelf &c, otherwiſe it ſhould have been if there had been

ſhewed

ſhewed the ſpeciall anſwer by the deed 28 E. 3. 4. *Meſne* 16.

A Writ of Meſne was brought upon the deed of the Anceſtor, of a gift made unto him *& heredibus ſuis legittimis*, with clauſe of Warranty and Acquitaile, and confeſſed by the deed, and it being alledged in the Count, that the Defendant is ſeiſed of the Services, ſo as the Tenure doth appear, he ſhall recover the acquitaile, but that he ſhould not onely by the deed, without alledging Seiſin of the ſervices, or that he was ready &c. 8 E. 3. 49. *Meſne* 20.

The acknowledgement of the Acquitaile in a Writ of meſne, ſhall bind the Heir for ever, but otherwiſe it is of Entry into the Warranty upon Voucher, 18 E. 2. *Meſne* 54. *Voucher* 232.

A Writ of meſne will well lie againſt that coparcener alone to whoſe part the Services are allotted &c. 3 E. 2. *Meſne* 45. *Vide* 3 H. 6. 44 2.

The Lord granteth over the Services of an Abbot, who holdeth of one in Frankalmoigne, the Grantor confirms to the Abbot to hold of him in Frankalmoigne, with clauſe of Acquitaile, and becauſe there was no Tenure betwixt them, it was holden that a Writ of meſne did not lie upon the deed; for a Seignorie of Frankalmoigne cannot be given away from the donor, and his heirs, 3 E. 2. *Meſne* 46. See 4 E. 3. *Meſne* 41. 5 E. 2. *Meſne* 64. It is holden that a Writ of meſne lieth upon ſuch a deed, and ſo ſeems the opinion to be of 3 E. 2. before, and it was excepted unto by the defendant onely; for that he did not alledge ſpecially the purchaſe of the Seignorie from the Donor, and Atturnement of the Services.

A Woman grants Acquitaile to her very Tenant by Fine, then ſhe takes a Husband, and hath iſſue and dyeth, the Tenant brings a Writ of meſne againſt the iſſue, who pleads that he hath nothing by Deſcent, but that which his father heldas tenant by the courteſie of *England*, upon which they were at iſſue. *Berry*, If he hath any Land by deſcent, then recover your Acquitaile, but if the Heir have nothing by Deſcent, then ſtay untill that time, 4 *E.* 2. *Meſne* 52.

A Seignorie was granted unto the Husband and wife, and unto the Heirs of the Husband by Fine, he bronght a *Per que ſervitia* againſt the Tenant, who pleaded an Acquitaile againſt the Grantor, and ſaving that &c. by which the Husband did confeſſe the ſame for him and his Heirs, and it was entred and Enrolled, that the Heir ſhould acquit the Tenant after the death of his Father, in the life time of the wife, which note, by *Fitzherbert*, the Services of meſne againſt him in the Remainder living, the Tenant for life of the meſnalty, which is a ſtrange Caſe, but this is by the confeſſion, and the Enrolment onely. 5 *E.* 3. *Meſne* 56.

Where he who confeſſeth the Acquitaile, cometh in at the Grand-Diſtreſſe, and ſaith that he was not diſtrained in his Default,

and that is found againſt him, he ſhall be forejudged and render damages, 13 *E.*3. *Meſne* 68.

After an acquitaile acknowledged upon a Fine, a writ of Meſne doth not lie to acquit him of any thing due before the Fine, as relief *&c.* 15 *H.*3. *Meſne* 76.

A deed of acquitaile was adjudged void, becauſe it was made in the time of warrre *&c.* 18 H.3. *Meſne* 77.

39 H.6.30. *Aſton* ſaith, that preſcription neither makes nor draws an acquitaile, where there is no Tenure, and there the party alwayes in his Count, ought to ſet forth a Tenure.

See 8 *E.*3 58. where the heir was bound to acquitaile by the Deed of the anceſtor, although he was not ſeiſed of the Services.

VI. *Where a man ſhall have a Writ of Meſne, where no ſervice is behind, and where the Lord hath acquitted him, and where not.*

Aſton ſaith, that notwithſtanding that Relief be not due, yet if the Tenant be diſtrained, and Avowrie be made upon the Meſne, the writ lieth well enough, if the Meſne will not joyn, becauſe the Tenant cannot abate the Avowrie, 10 H.6.27. *vide* 13 H6. *Meſne* 3.

Thorp ſaith, that if the Lord diſtraineth the Tenant for the Services of the Meſne which are not due, the Tenant ſhall have an action of Treſpaſſe againſt him, and recover his damages, and thereunto agree, *Shard* and *Wilby*. *Quere* 17 E.3. 15. alſo *Thorp* ſaith, that a Writ of *Meſne* doth not lie for the Tenant in that caſe, 31 E.3. *Joinder in aid* 14. but *Seton* held that he ſhould have a Writ of meſne, for upon refuſall to join with him in the Caſe, for then he is diſtrained in his default, though nothing be due.

Where there are two Meſnes, and the Lord diſtrains for the Services of the Meſne next to him, now the Tenant ſhall have a Writ againſt his Meſne, although that he hath paid the Services, for payment of ſervices is no acquitail to the Tenant where he is diſtrained &c. by *Priſoit*, 39 *H* 6 30. *Meſne* 4. But in ſuch Caſe he ſhall not recover damages againſt the *Meſne*, 17 *E.* 3. 44. Where *Stone* ſaith, it is ſufficient to the Meſne that he hath done that which he ought to do, but *Green* ſaid, that a Writ of Meſne doth lie, becauſe diſtrained by the Lord, be it for cauſe, or without cauſe, and 18 *E.*3.19. *Meſne* 35. he recovered.

If there be many Meſnes, and the Lord avow upon the Meſne next to him, the Tenant ſhall have a Writ of Meſne againſt his Meſne, and ſo each by the other untill *&c.* 34 H 6.46. *Avowry* 25. and ſo adjudged 17 *E.*3 44. That a Writ of Meſne lieth for the Meſne againſt the Meſne, 18 *E.*3 19.

But

But if the Lord avow upon a ſtranger, no remedy for the Tenant, for he ſhall not have a Writ of Meſne, 17 *E.*3.6. and 15.31 *E.*3. *Joinder in aid*, 14. 34 *H.*6. *Avowrie* 25. *E.*3.35. he may joyn if his beaſts be impounded for thoſe of the Tenant, although the Avowrie be upon a ſtranger.

VII *Where Seiſin of Services is a cauſe of acquitail, and where tender of the ſervices.*

UPon demand what he had to bind him, the Plaintiff ſaid, that he held of the Defendant, and that he was ſeiſed of his Homage, and that he and his anceſtors had acquitted him and his anceſtors time out of [illegible], &c. the defendant ſaid, that the plaintiff had an elder brother living, and it ſeemed to be a good anſwer, becauſe the binding is dereigned upon the Preſcription, in which caſe Seiſin of the Services is not materiall, but if he had alledged onely the Tenure and the Seiſin of the Homage, the Defendant ſhould be concluded, 11 *E.*3. *Meſne* 36.

Note, that he who claimeth acquitaile for cauſe of owelty, ought to alledge in fait, that he holdeth of the Defendant by ſuch ſervices, as if it be by homage, of which he demandeth acquitaile, and that the Defendant is ſeiſed of his Homage, or that he hath tendred his Homage, 30 *E.*3. 23. *Meſne* 40.5 E.3.49. he needs no Seiſin in ſuch caſe.

But when the Acquitaile is demanded by the Deed of the Anceſtor, although that he count that he held of him &c. he ſhall recover the acquitaile upon the Deed acknowledged, notwithſtanding the alledging of the Defendant, that the Plaintiff hath not done nor tendred the ſervices, *vide* 8 E.3.49. *Meſne* 20.

A Writ of Meſne for acquitaile of ſuit to the Hundred Court, it ſhall not be maintained upon a Deed confeſſed, nor by preſcription, but if he could have alledged Seiſin &c. the Meſne ſhould be bound, as *Watſon* conceives upon the Caſe, but ſee the book, that ſuch ſuit doth not lie at all in acquitaile, becauſe royall, and ſhall be done by the Tenant by reaſon of his Refiancy, 4 E.3.42. *Meſne* 42.

Meſne brought againſt one Parcener, alledging the ſervices to be alotted to her, and ſhe ſeiſed of the ſervices *&c.* this is a good cauſe of acquitaile, 3 E 2. *Meſne* 45: 19 E.2. *Meſne* 61. and there ſhe ſhall not have aid of the others, 3 *H* 6.43.

Seiſin of ſervices is not traverſable, where he layes the acquitaile in the Right as Preſcription, or by Feoffment of the anceſtor, and acquitaile at all times, after that Feoffment, 4 E.2. *Meſne* 63.

In a Writ of Meſne, it was alledged for the binding, that he held of the Defendant by Homage, and he ſeiſed of the ſervices challenged, becauſe that Homage is a cauſe of warranty, and the Plaintiff recovered, 13 E.1. *Meſne* 73.

An

An Infant ſhall not be bounden without Title of Right, as the Deed of the anceſtor, preſcription or confeſſion &c. not for that he is ſeiſed of the ſame ſervices, by which upon ſuch binding by ſeiſin &c. alledged the plea did remain, for that an infant ſhall not be forejudged within age, 7 *E.* 2: *Meſne* 66.

See 5 E. 3. 11: and 50 and 56: that Seiſin of it ſelf is cauſe of acquitaile of other ſervices, and is traverſable, but Seiſin of ſervices alledged, ſhall not eſtoppe the defendant to ſay that he doth not hold of him, and ſo to ouſt the acquitaile, 20 E. 3. *Meſne* 13.

When a man gives Land in Tail, *Tenendum &c.* and doing the ſervices due unto the chief Lord, the Donee ſhall not have acquitaile of Rent, and ſuch which he may do, without alledging in fact, that he tendred them to the Lord, which he refuſed *&c.* 21 E. 3. 49.

VIII. *The form of the Count, or Declaration in a Writ of Meſne.*

THE Declaration in a Writ of Meſne ſhall be alwayes generall, and of one Form, whether it be brought by the Tenant in Demean or by the Meſne &c. 17 E. 3 44. 18 E. 3. 19: E. 1: *Meſne* 72.

Tenant for life, the Remainder over in Fee, ſhall have a Writ of Meſne, and ſhall count as very Tenant; for this is the ancient form, 15 *H.* 6. *Meſne* 2 17 E. 3: 39. he ought to alledge in the Replication that the remainder is over in Fee.

In a Writ of Meſne, the Plaintiff declares, that he is diſtrained by three, betwixt whom and him the Defendant is Meſne &c: and the Defendant ſaith, that one of the three is dead, yet the Declaration is good; for he is a ſtranger, and the Judgement ſhould not be altered upon the forejudger, for now they two are chief Lords. 10 *H.* 6: 27: *Meſne* 3:

He ought to alledge a Tenure between the Meſne and him who diſtrains in his Count, but not by what ſervices certain, becauſe he is a ſtranger, and that ſhall not be tried betwixt them, and if he declare of a Tenure of the Meſne in Frankalmoigne, he ought to alledge the commencement of it, and if he declare further of an acquitaile by preſcription generally, the Declaration is not double, but the Frankalmoigne waived, he may alſo referre the Preſcription to the Frankalmoigne, and then it is ſingle, and upon that he ſhall be acquitted, 39 H. 6. 30. and 4. E. 4 25. *Meſne* 5.

But ſee 9 E. 4. *hors de ſon fee* 15. that is in the Election of the Plaintiff, if he will declare that the Defendant holds of him who diſtrained, or not, but if he do not declare ſo, the Defendant may well ſay, that the Land is out of the Fee of him who diſtrained, and if he do ſay ſo in his Declaration

claration, then he ought to traverſe the Tenure, *&c.*

It is not materiall to alledge the quantity of the Services in the Declaration, for that ſhall be ſaved to the Defendant by proteſtation: but if he declares that he holdeth all by one entire Tenure, and one Service of the Meſne, where in truth he holdeth by ſeverall Tenures, and ſeverall Services, the ſame is naught, 2 H:5.2. *Meſne* 6. of the quantity of the Services, not traverſable in a writ of Meſne. See 8 *E*:3.49. *meſne* 20 16 *E*.3. *meſne* 30. and 19 *E*:3. *meſne* 37. Where the Defendant ſaith, that the land and alſo other land is holden of him by the Services alledged by the Plaintiff, yet the Declaration was awarded good, ſo the quantity of the land is not traverſable.

He declared that he held of the Defendant who held over of J. where in truth the Defendant held of a W. and he over of J. this is a naughty Declaration, 44 *E*:3. *meſne* 27. The ſame Law, if he declare that the Defendant holdeth of J. whereas in truth he holdeth of J. but in the Right of his wife 22 *E*:4.35.

The Count is, that he holdeth of the Defendant by twelve ſhillings, &c. and that he is diſtrained for Homage, and ten ſhillings, (*s*) to pay two ſhillings to the Defendant, and ten ſhillings to the Lord, &c. and yet the Count good, for this is to the action for that part, &c. 30 E:3.4. *Meſne* 39.

He who claims to be acquitted of Service for Service, &c. he ought to declare, that he hath done or tendred the Services to the Defendant, 30 E: 3.23. *Meſne* 4. yet the Seiſin is not traverſable, be it by Preſcription or Omelty, 5 E:3.49. As if the meſne bring a writ of meſne, he ought to declare that he is diſtrained, &c. 17 E:3.44.

A writ of meſne by two husbands and their wives, ſuppoſing that they are diſtrained by their Plow-Cattell, it is a good Declaration, notwithſtanding the exception, that the wives cannot have Goods in Common with their husband, 14 *E*.3. *meſne*.8.

It is ſufficient to declare that he was diſtrained for the Services of the Defendant, without ſaying which Services, 14 *E*.3. *meſne* 10.

If the Plaintiff be driven to ſhew the cauſe of Acquitail. and he alledgeth it in a Declaration upon a Deed, or Fine, as for Frankalmoign, &c. which Deed being ſhewed doth not maintain that cauſe, but proves Acquitail for another cauſe, the Count ſhall abate *per Curiam*, yet a writ of meſne lyeth without a Deed, 4 E:3.19. *meſne* 41.

The Plaintiff in meſne demands Acquitail by reaſon of a Gift in Frankalmoign, rendring Rent, and the ſame was challenged, becauſe it cannot be Frankalmoign, where a Rent is reſerved, and yet the Court held the Count good, 13 *H*:4. *meſne* 74.

A meſne bringeth a writ and declares that he is diſtrained by the Beaſts of his Plow, and the Declaration good, although he is not Tenant in Demeſne, 17 E.3.44-18 E.3.19.

IX. *Bar of Acquitaile, or Extinguiſhment of it.*

A Woman meſne, took a husband, had iſſue, and the Tenant did releaſe the Acquitail to the husband and his heires, the husband and wife died, yet the iſſue was bound to the Acquitail, notwithſtanding the Releaſe to the husband, 38 *E.*3.10. *Meſne* 24.

A Grantee of a menalty over by Fine, ſhall not ouſt the Tenant of his Acquitail againſt the Conuzor and his heires, untill he hath attorned, &c. 40 *E.*3.7. *meſne* 26.

So if the Tenant be attendant to another by his voluntary agreement, although the Defendant hath not granted to him the Menalty, it is a good Bar, 19 *E.*2. *Meſne* 60. But if the Defendant ſaith that the Tenant hath attorned to the King, the Plaintiff may well avoid it, by ſaying, that it was by conſtraint, *&c.*

If the Tenant be attendant to the Lord, he ſhall not have a Writ of Meſne, nor Acquittail after againſt the Meſne, 17 E:3.41.4 *E:*3.19 *Meſne* 41.

The Tenant ſhall not have a Writ of Meſne, nor Acquittail of a thing which himſelf of right ought to do, or by matter in Fait, 30 E:3.4. *Meſne* 39.49 *E.*3.10.21 E.3.49. nor by the Deed of the Plaintiff himſelf, *t. E.* 1. *Meſne* 72.4 E:3.42. *Meſne* 42.17 E:2. *Meſne* 58.

It is no plea that the Plaintiff hath nothing in the Freehold, becauſe the Meſne ſhall have it, *t.* E.1. *meſne* 73.

In a Writ of Meſne, the Defendant ſaith, that the Plaintiff hath no Fee, nor Seigniory, and at iſſue upon that; *Quære* if it ſhould not be that the Defendant, or he who diſtrains hath not Fee nor Seigniory, or whether it ſhall be intended as the Plaintiff hath brought his Writ as Meſne, which ſeems the ſtrongeſt intendment, 14 E.3.9.

It is a good Plea in Bar to ſay, that he who diſtraineth hath not Fee nor Seigniory, 27 E:3. *Meſne* 15. See the contrary, 10 E. 3. 28. And to ſay that he himſelf hath not Fee nor Seigniory is a Diſclaimer, 14 E:3. *Meſne* 7.28 E.3. *Meſne* 16.

It is good plea *prima facie*, that the Plaintiff is but Tenant for life, and if he holdeth in Dower, or otherwiſe, is Tenant to the Lord, as for a Remainder over in fee, the ſame muſt be alledged, 13 E.3. *Meſne* 12. 17 E.3. 39.

If the Lord in Frankalmoigne grant over the Seigniory, the Acquittail is extinct, becauſe it ſhall be onely of the Donor; and now he is attendant to another, 4 E.3. 19. *Meſne* 41.

It is a good plea for the Defendant to ſay, that he never had any thing in the Land in Demean, nor in Service, &c. 3 E.2. *Meſne* 46. But ſee that the ſame is no plea but by the driving of the Plaintiff to alledge the ſpeciall binding: As he who ſaith, that the Plaintiff doth not hold of him,

yet

yet he ſhall be bound by the Deed of the Anceſtor, 5 E.2. *Meſne* 64.

Where the binding to the Acquitail is dereigned by the Deed of the Anceſtor, it may be avoided, becauſe he hath nothing deſcended to him from the ſame Anceſtor, 4 E.2. *Meſne.* 52. ſee 14 E.3. *Meſne* 7. 15 *Aſſ.* 9.

If a Writ of Meſne, the Defendant ſaith, that the Husband of her Grandmother aliened the land before the Statute, where he had not any thing but in the right of his Wife, to hold of him and his Heirs: And that ſhe hath brought her *Cui in vita* for the Land, and admitted a good Bar, the Plaintiff ſaid, that the Grandmother made the Feoffment when ſhe was ſingle, before Marriage, &c. 4 E.2. *Meſne* 63.

It is no plea for the Meſne to ſay, that the Rent whereof he demands Acquitail, is but a Rent-ſeck, where the Acquittail is claimed by Deed of the Anceſtor, *t.E.*1. *Meſne* 62. *F.N.B.* 136.

Where the Plaintiff claims Acquitail of Suit, it is a good plea for the Defendant, that he nor his Anceſtors never did ſuch Suit, 11 H. 3. *Meſne* 75.

A Writ of Meſne, ſuppoſing that the Defendant was Meſne between him and the Queen, who diſtrained &c. It is a good plea that he held immediatly of the King, 29 E:3. *Meſne* 79.

Where the binding is made by preſcription againſt the Defendant and his Anceſtors, for the Plaintiff and his Anceſtors, it is a good plea, that the Plaintiff hath an elder brother, 11 *E.*3. *Meſne* 36.

But ſuch Acquitail ſhall be well dereigned againſt one of the Siſters only, where the whole Menalty is allotted to her, yet all of them together ſhall pay Relief for it, *&c.* 19 E:2. *Meſne* 61.

Out of the Fee of him who diſtrains is a good plea, 9 E. 4. *Hors de ſon fee* 15. 12 E.3. *ibid.* 24. 17 *E.*3. *Iſſue* 32. contrary, 10 *E.*3. 28.

Lord, Meſne, and Tenant are, if the Lord purchaſe the Tenancy, the Acquitail is extinct, 2 *E.*2. *Extinguiſhment* 6.

Note that he who recovers the Acquitail ſhall have no more but the Services alledged upon the Recovery, and for no other thing, nor againſt another Lord.

X. *Where the Tenant for life, or in Dower ſhall have a Writ of Meſne, and where the Writ ſhall be brought againſt them.*

TEnant for term of life ſhall not have a Writ of Meſne, but when the Remainder is over in Fee, ſo that he is Tenant to the Lord, 15 H.6. *Meſne* 2. 17 *E:*3. 34. 13 *E.*3. *Meſne* 12.

Tenant in Dower ſhall have a Writ of Meſne, 13 E.3. *Meſne* 12. 28 E. 3. *Meſne* 17. *t.*E.1. *Meſne* 72.

He who hath a Deed of Acquitail againſt the husband of Tenant in Dower, of the Menalty and his Heirs, ſhall have a Writ of Meſne againſt the Heir, living the Tenant in Dower, not againſt him, 31 E. 1. *Meſne* 55.

Tenant for life ſhall have Covenant againſt him in the Reverſion, but not a Writ of Meſne, 17 E. 3. *Meſne* 33.

If the Meſne leaſeth his Menalty for life, the Writ lyeth againſt the Leſſee, not againſt him, 12 E. 3. *Meſne* 11. 30 E. 3. 29. but it is there ſaid, that the Judgment againſt Tenant for life ſhall not bind him in the Reverſion.

In a Writ of Meſne, the Defendant ſaith, that he hath but for life in the Mannor to which the Services are regardant, the Remainder to *T.* and that this Writ is a Writ of Right, &c. And they were at Iſſue, whether he had fee, or for life. 10 E. 3. 58. *Meſne* 21.

Birry ſaith, That the Tenant for term of life ſhall have a Writ of Meſne againſt his Leſſor, as well as Tenant in Dower ſhall have it, *quære* 4 *E.* 2. *Meſne* 51.

A Writ of Meſne doth not lye againſt Tenant by the Curteſie, Tenant of the Services, but againſt the Heir in Reverſion, which ſee, 5 E. 2. *Meſne* 52. 14 E. *Meſne* 71. contrary.

Meſne for Tenant for life againſt his Leſſor, 21 E. 3. 49 *Meſne* 49 4 E. 2. *Meſne* 51. 6 E 2. *Meſne* 65.

A Writ of Meſne lieth againſt Tenant in tail, but not *forejudger*, 14 E. 2. *Meſne* 70. But ſee there, becauſe that the Tenant in tail was fore-judged in a Writ of Meſne, the Iſſue could not diſtrain for the Services, the Judgment ſtanding in force.

Alſo it lieth for Tenant in tail, *t.* *E.* 1. *Age* 119. 120. 21 *E.* 3. 49.

Birry ſaith, that this Writ doth not lye, but betwixt very Lord, and very Tenant, 2 E. 2. *Extinguiſhment* 6.

XI. *Where fore-judger ſhall be in a Writ of Meſne, and where in a* Scire facias, *and where againſt the Lord alone.*

THe Meſne ſhall never be fore-judged after he hath once appeared, 10 H. 6. 26. 13 H. 6. *Meſne* 3. *contr.* 13 *E.* 2. *Meſne* 68. and 46 E. 3. 31.

In a *Scire facias* upon Acquitail confeſſed in a Writ of Meſne, the Meſne ſhall not be fore-judged, but ſhall be alwaies diſtrained untill he appear, and then he may plead any plea in Bar, or in Extinguiſhment of the Acquitail, and the Judgment in this Writ is not that he ſhall acquit, but that he ſhall be diſtrained to acquit, 50 E. 3. 23.

But ſee 31 E. 1. *Meſne* 53. and 13 E. 2. *Meſne* 68. That the Meſne ſhall be fore-judged in a *Scire facias* upon default, or upon Verdict paſſed againſt him, and therewith agreeth the Statute of *Weſt.* 2. *cap.*

2. *cap.* 9. *F. N. B.* 136. and 13 E. 2. upon a Verdict paſſed againſt the Meſne, the Tenant who ſued proces of a Statute upon a *Scire facias*, could not recover damages, without having the Meſne fore-judged, for which he was non-ſuit, and took the proces at the Common Law.

A Writ of Meſne againſt Husband and Wife, fore-judger doth not lye for the benefit of the wife, but proces at the Common Law, 7 *E*:3.41. *Meſne* 18.

Note, fore-judger againſt the husband and wife is Error, not void by *Scrope*, for *Cui in vita* doth not lye for the wife: Other Serjeants held it void, 9 E:2. *Meſne* 67. See 32 *E*:3. *Receit* 127 by *Sadler* and *Mowbray*, that the Judgment is void, 30 *E*:3.28.

An Infant ſhall not be fore-judged, 7 *E*:3. *Meſne* 66.

Fore-judger ſhall not be granted againſt Tenant in tail, or Tenant for life, by the Statute, but where it was granted, the Iſſue in tail could not diſtrain for the Services, untill the Judgment given againſt his Anceſtor, was defeated by Error, 14 E:2 *Meſne* 70.

The Heir of the Conuſee of Acquitail, brought a *Scire facias*, and being found that he was diſtrained for the default of the Conuſor, he recovered damages, but no fore-judger, becauſe he is not the ſame perſon to whom the Conuſans was, &c 18 *E*:2. *Meſne* 57.

So if the Conuſee bring *Scire facias* againſt the Heir of the Conuſor, &c. no fore-judger ſhall be, becauſe not the ſame perſon who acknowledged, &c. ſo out of the Statute, but if he do appear and be fore-judged, or it be found againſt him, he ſhall pay damages, and alſo ſhall be fore-judged 46 E:3 31.

Fore-judger doth not lye but where all thoſe which have any thing in the Menalty, are named in the Writ, and alſo appear, ſee this 3 H: 6. 38. 19 E:3. *Error* 1.

Note, the Statute ſaith, that by *Iſtud ſtatutum providetur remedium ſcilummodo, cum ſit unus Medius tant. inter Dominum diſtringentem, & tenentem*, but this is onely to be intended of fore-judger, for the Writ lieth, if there be twenty Meſnes, and for each againſt the other.

Fore-judger doth not lye againſt him who hath but for life, as a Meanalty unto the husband and wife, and to the Heirs of the husband, they ſhall not be fore-judged, and that is becauſe one of them hath but an Eſtate for life, and not onely for the cauſe of Coverture, *&c.* 5 E: 3. *Per quæ ſervitia* 16.

Note that Fore-judger, nor Proclamation by the Statute, cannot be againſt one Defendant, if not againſt them all; and therefore if in a Writ of Ward, or Meſne againſt two, one be returned diſtrained, and that the other hath nothing, yet no Proclamation ſhall iſſue forth, untill the other be returned warned alſo, for the Proclamation cannot be ſevered nor apportioned, nor the fore-judger upon it, 19 E. 3. *Proclamation* 5.

XII. *Where Judgment ſhall be for to recover the Acquitail before the point tryed in the Originall, where he ſhall not have Judgment for to recover the Acquitail.*

UPon Iſſue joyned and found, that he was not diſtrained in his default, the Plaintiff ſhall recover the Acquitail preſently, 44 *E.* 3. 2. *Meſne* 24 11 H 4. 51. 22 *R.* 2. *Meſne* 22. 16 E. 3. *Meſne* 31. 15 E: 3. *Meſne* 38. 18 E: 3. 19. *Meſne* 35. 5 H. 7 3. 16 H. 7. 9.

Scire facias upon a Fine of an Acquitail confeſſed in a Writ of Meſne, at the *Sicut alias*, the Sheriff returneth Iſſues, the Defendant doth not appear, the Plaintiff could not have a Writ of Inquiry of Damages, for the Judgment in this Writ ſhall not be other, but that he ſhall diſtrain for the Acquitail, and ſhall never render damages, where he makes default in this Writ, ſo as Diſtreſſe ſhall be contiuued till he appear, or be forejudged, 50 E: 3. 23. *Meſne* 29.

Judgment to recover the Acquitail, where the VVrit was abated by Judgment; where the Meſne bringeth the Writ, and Iſſue is taken not diſtrained in his default; and no ſpeciall matter alledged by the Plaintiff to maintain the Writ: And found the Acquitail due, but that he was not diſtrained, for he could not be when he was not Ter-tenant, for which the Writ abated, and Judgment of Acquitail for the Plaintiff, 18 E. 3. 19. *Meſne* 35.

But upon that Iſſue found directly for the Plaintiff, he ſhall recover damages, and a Writ to diſtrain the Defendant to acquit, &c. 14 *E.* 3. *Meſne* 7. and therewith agrees 15 *Aſſ.* 9. *Meſne* 44.

It is holden 31 *E.* 3. *Judgment* 136. That no Judgment ſhall be given upon this, iſſue not diſtrained, before it be tryed.

XIII. *Where after Judgment to recover the Acquitail, or after confeſſion of it, the Plaintiff ſhall have a* Scire facias, *or a* Diſtringas ad acquietandum, &c.

Scire facias againſt the Heir upon Recovery in Meſne againſt the Anceſtor, he had judgment againſt the Heir, and *Diſtringas ad acquietand.* which was not ſerved nor continued, and two or three years after the Plaintiff prayed remedy, and had a Diſtreſſe as the Statute requireth, although that the Judgment was long time before, and proces of execution granted upon it, and not purſued, 45 *E:* 3. *Meſne* 28. the Heir ſhall not be fore-judged by default, becauſe he is out of the Statute, which ſpeaks only of the Conuſor, &c. but a Diſtreſſe infinite ſhall iſſue, 46 *E.* 3. 31. *Proces* 153.

Upon

Upon iſſues returned at *alias Scire facias*, againſt him who hath confeſſed the Acquitail, the Plaintiff prayed a Writ to enquire of the Damages, and could not have it, for he ſhall not have damages in this Writ, if the Defendant never appeared, but Diſtreſſe infinite untill he appear, 50 *E.*3. 13. *Meſne* 29.45 *E.* 3. *Proces* 152.

The Judgment in Meſne was, that the Plaintiff ſhould recover, *& damna, & præceptum fuit* to the Sheriff, *quod diſtringet ad acquietand.* 34 E.3. *Meſne* 7.15 *Aſſ.*9. *Meſne* 44.

Hee who ſues Proces upon the Statute ſhall never have damages without fore-judger of the Meſne, but he may be non-ſuit, and ſue at the Common Law, 13 *E.*3. *Meſne* 68.

Diſtring. ad acquietand. upon the Acquitail confeſſed a year before, the Defendant came, and pleaded, and afterwards caſt a Protection. But note, he could not have pleaded a plea to defeat the Judgment in the Originall, but onely to ſtay the Execution, 31 *E.*3. *Protection* 53.

XIV. *When the Meſne ſhall have a Writ of Meſne.*

IN a Writ of Meſne brought by the Meſne, the Writ and Count ſhall be generall, that he was diſtrained by the beaſts of his Plow, and a good Count, and not diſtrained in his default a good iſſue, but upon ſuch iſſue the Plaintiff ought to alledge all the eſpeciall matter, ſo as the Jury may enquire upon it, 17 *E*:3.44. *Meſne* 34.18 *E.* 3. 19. *Meſne* 35. And there the Writ was abated upon ſuch geuerall iſſue taken, and verdict, that he ought to have the Acquitail, but that he could not be diſtrained, becauſe he had nothing in Demeſne, &c.

Note, the Meſne ſhall not have Meſne, if not in reſpect of the damages loſt to the Tenant by the default of his Meſne, and it behoveth that execution be had againſt him of the damages, &c. And his Meſne ſhall have *Oyer* of the firſt Record, becauſe this Writ is grounded upon it. Yet *Wilby* ſaith, That becauſe this is an Originall Writ, he ſhall not have *Oyer*, but there the Meſne ſhall alledge all the matter in his Count, 20 *E.* 3. *Meſne* 14.41 E.3.11.

It is holden *t.E.* 1. *Meſne* 72. That the Meſne ſhall have a Writ of Meſne. &c. 29 *E.*3: *Meſne* 79. If there be twenty Meſnes, every one may have a Writ of Meſne againſt the other, and 34 H. 6. 47. *Avowry* 25. And ſee alſo for that, 17 *E.* 3. 39. and 44.

The Meſne being Tenant for life of the Tenancy, ſhall have a Writ of Meſne againſt his next Lord, 17 E.3.39.

XV. *Where*

XV. *Where the Defendant in Meſne may diſclaim in the Seigniory.*

Pole ſaith, That the meſne cannot diſclaim in a Writ of meſne, becauſe upon this, a writ of Right for diſclaimer doth not lye, ſo not like to Avowry. *Schard* and *Ald.* contrary, when the Acquitail is laid for cauſe of Seigniory between them *&c.* But *Scrope* ſaith there, that after that the meſne hath ſaid that he hath nothing by deſcent, he ſhall never diſclaim in the Seigniory, for ſuch pleading is a confeſſion of cauſe of Acquitail, 14 *E:*3 *Meſne* 7.

Finchden ſaith, That the meſne may diſclaim in a writ of meſne, 44 *E:* 3.2.*Meſne* 27.

In a writ of meſne, the Defendant did diſclaim, the Plaintiff would have eſtopped him, becauſe that in a writ of meſne againſt his Father, whoſe Heir he is, he pleaded that he was not diſtrained in his default, and thereby did acknowledge the Acquitail, and no Eſtoppell: but *Wilby* ſaith, That againſt a ſpeciall Deed of his Father of Acquitail, he ſhall not diſclaim, 28 *E.*3.*Meſne* 16.

The meſne may ſtay the Acquitail by Diſclaimer, if not that he be bound by Charter, 18 H.3.*Meſne* 77. or by a Ternure in Fait, or by Preſcription, and then he cannot, 5 *E:* 2. *Meſne* 64. 16 H. 7 1. *acc.* VVhere it is ſaid, that Diſclaimer lieth where the Acquitail is dereigned by Preſcription, as Homage Anceſtrell: *Litt.* agrees, if not, that the meſne be ſeiſed of the Services of ſuch Tenant; And ſee 16 H.7.1. where the Plaintiff did aver his writ after ſuch Diſclaimer, to ſave damages.

In meſne the Defendant diſclaimes, the Plaintiff ſaith, that he holdeth of him by Fealty and Rent, and he ſeiſed of the Services. The Defendant, That he had but a Rent-ſeck, and at iſſue upon the Tenure. *Watſon*, which proves that he cannot diſclaim, but ſaid there, that the Defendant confeſſed that he had a Rent-ſeck, and the Plaintiff ſaid, that it was a Rent-ſervice, which was a Tenure, and he ſeiſed, by which the generall iſſue was taken, if he held of him, or not, 20 *F.*3. *meſne* 13.

Meſne by Tenant in tail againſt him in the Reverſion, he may well diſclaim if he be bound onely by reaſon of the Reverſion, if not, that he be bound by a Deed of Acquitail, 8 *E.*3 26.*meſne* 29. ſee 40 *E:*3. 27. *Finchden, vi.*22 *E:*4.35.

XVI. *The manner of Acquitter of the Plaintiff, and to diſcharge himſelf of the Damages.*

Wilby ſaith, That the manner of Acquitter in Meſne, is not to recover in value, as upon a Warranty, but the Defendant ſhall be diſtrained by his Cattell, to put his Beaſts in the Pound for the Beaſts of the

the Tenant, 14 *E*:3. *meſne* 7. and therewith agrees, 32 E.3. *meſne* 35. 17 *E*:3.6. and 44.34 H:6.47. and 15 *E*:3. *Joynder in Aide* 15. and 39 *H*:6. 30, to put his Cattell into the land to be driven for the Cattell of the Tenant, or to put his into the Pound, in the place of the Beaſts of the Tenant, 15 H.6. *Meſne* 2.

XVII. *Meſne againſt him who hath a Reverſion, or Remainder, where there is a Tenant for life, Meſne, and the Writ doth not lye againſt him.*

LOrd, Meſne, and Tenant by Homage, the Meſne grants the Menalty over for life, the Tenant attorns, and afterwards is diſtrained for Homage, he ſhall have Meſne againſt the Leſſee, 12 *E*: 3. *Meſne* 11. *Quare* for Tenant for life ſhall not do Homage, 40 *E*:3.7. *Meſne* 26. and 10 *E*. 3.58. *Meſne* 21. and they were at iſſue, if the Defendant had the Mannor to which the Services were regardant in fee, or for term of life.

A Menalty was granted unto the husband and wife, and to the Heirs of the husband, who acknowledged the Acquitail for him and his Heirs, in *per quæ ſervitia*, and died, and his Heir was bound to acquitail, living the wife, *&c. Fitz.* It is a marvellous caſe. So it ſeems by him, that for cauſe of Lordſhip only, he in the Remainder ſhall not be bound to acquitail, living the Tenant for life, 5 *E*:3. *Meſne* 56.

It is ſaid, that Meſne doth not lye againſt the Heir in Reverſion, living Tenant by the Curteſie, becauſe he is Tenant to the Lord, 14 E. 2. *Meſne* 72. but 4 *E*:2. *Meſne* 52. *contr.* And the meſne lieth againſt the Heir in ſuch caſe, See *F. N. B.* 136. *ac.*

XVIII. *Where a man ſhall have a Writ of Covenant, and not a Writ of Meſne for not acquitting.*

THe Tenant doth enfeoff an Abbot, the Lord reciting it doth confirm to the Abbot to hold in Frankalmoigne, and upon that Deed he was bound to acquitail in a Writ of meſne, and the Abbot not put to a writ of Covenant, 5 E:2 *Meſne* 46. *quare* if he was not the ſame perſon.

Markham thinks, that meſne doth not lye upon ſuch a Deed, which doth not begin with the Tenure; but *Billing* contrary, and with him agrees, *F. N. B.* 136.4 *E.* 4.25.

Meſne againſt the Heir upon acquitail confeſſed by a Fine by the Anceſtor, 4 E.2. *Meſne* 52.

See 14 E.3. *Meſne* 7. Where *Schard* ſaith, That a ſpeciall acquitaile

doth not bind the Heir without Aſſets, becauſe it is but a Covenant. Alſo he ſaith, that a Deed without a Tenancy is no cauſe of acquitail.

XIX. *Where a man ſhall have a Writ of Meſne before notice given to the Lord, and where before Attornment after the Seigniory is granted by Fine.*

IF the Tenant be diſtrained for ſuch Services which he holdeth of the Meſne, he ſhall have a Writ of Meſne, without any notice given to the Meſne; And if for others, then he ought to give notice to the Meſne, and pray him to take his beaſts out of the Pound, and then he ſhall have meſn, and not before, 15 H.7.*M.*2. ſee 3 E.3.*Meſne* 14. Where it is ſaid that at this day the Tenant ſhall not recover damages againſt his Meſne for not acquitail, without acquitail demanded before.

If the meſne grant over his Menalty by Fine, yet a Writ of meſne lieth againſt him, untill the Tenant hath Attorned to the Conuſee, 40 *E*: 3. 7.*Meſne* 26.

XX. *Where the Meanalty ſhall be extinct by act in Law, and where it ſhall remain in the Lord, in the place of his Seigniory.*

FOr fore-judger of the Meſne, the Menalty is extinct and the Tenant ſhall be attendant to the Lord, as the meſne was, although it is by greater Service, becauſe his own Act, 7 E:3.8.18 *E*:3.18.

If the meſne diſclaim in a writ of meſne, the Tenant ſhall be attendant to the Lord for the Services, although they be many, 14 *E*.3.*Meſne* 7.

But if the meſne be attainted, the Tenant ſhall be attendant to the Lord only, for the Services which he ought to do to the meſne, 1 *E*: 3. 6. So if the meſne dye without Heir, 10 *E*: 3. 54. contrary if he held of the meſne by Frankalmoign, 17 E:4.12. by *Needham*.

XXI. *Proces in a Writ of Meſne.*

PRoces upon Judgment againſt the Heir in *Scire facias*, not purſued, 45 *E*.3.*Meſne* 28.*vi*.50 *E*.3.23.*Meſne* 29. Proces upon Iſſues recovered at the *alias Scire facias* againſt him who hath notice of the Acquitail by a Fine, &c:

REPLEGIARE.

I. *Where the place and day are traverſable in a Replevin.*

A Replevin of taking in *G.* in *D.* the Defendant ſaith, that *G.* is in *S.* not in *D.* and makes Avowry, and good, for the place is traverſable here, otherwiſe it is in Treſpaſſe of Battery, where no Freehold comes in queſtion, 2 *H.6. Replegiare* 1. And although he is but to have retorn by Avowry, yet the Plaintiff ought to maintain his Writ, 41 E:3. *Repl.* 29. 9 *E.* 4.41.

If the Plaintiff allow the taking in two places, (*s*) in *D.* and *I.* If the Defendant ſaith, that the two places are in two other Townes, (*s*) *S.* and *T.* he ought to alledge in certain, in which of the Towns, each place is. 20 *H.6. Repl.* 6. 22 E.4.51.

It is no plea in a *Homine Replegiando*, that he took him in another place, without ſhewing cauſe. And there it is ſaid, that a man need not alledge the place in his Count, in a Replevin, 9 E.4.14. contrary of the Count, 22 E.4.51. that he ought to alledge the place.

Repleg. of taking the firſt day of *Auguſt*, he avowed for an Amercement in the Court, the fifth day of *Auguſt*, and that he took the Cattell in *September* ſuch a day, without that, that he took them the firſt day of *Auguſt*, and the Iſſue recited; yet it was ſaid, that the day is not traverſable in a Replevin, nor in Treſpaſſe, but generally, that before, or after, *&c.* 21 *H.6. Repl.* 7. But ſee, 12 *H.6.* 4. and 12 E.4.6. That if he juſtifie at another day in Treſpaſſe, he ſhall not traverſe the day ſuppoſed, but the time generally before, or after.

In a Replevin of two Oxen, the Plaintiff was Non-ſuit, and Return awarded, and they being eſloigned they had two Cowes of the Plaintiffs for them, the Plaintiff did remove the plea, and counted of two Cowes, ſuppoſing them to be taken the ſame day that the Oxen were, and holden that the Count was not good, and that he ought to have a new Replevin of the Cowes, if the Defendant have not cauſe to diſtrain, and ſhall count

from the day of the return awarded in the Liberty; For which they were at Iſſue, if theſe Cowes were taken after the Writ, (1) before the return, &c. and the day traverſed, *M.*13 *E.*3. *Repleg.* 37. *acc.*

The day is well traverſable for Damage-feaſant, not for Rent, if not, that he ſhew the eſpecial matter, as that it was at another day, at which day he was out of his Fee, *P.*10 *E.*3. *Avowry* 158.

II. *Where he who pleads in abatement of the Writ, ſhall avow to have Return.*

HE who ſaith, that he took the Cattell in another Town, ought to avow, 2 *H.*6. So alwaies when by his plea he confeſſeth the taking, 13 E 3. *Rep.*37. 41 E.3. *Rep.*29. So if he ſaith, the property is to one of the Plaintiffs only, 34 *H.*6. *Rep.*1.

So where he ſaith, they were anothers beaſts, 47 E. 3. *Rep.*30. Otherwiſe it is if he ſay, the property is in another, becauſe then the Plaintiff hath no cauſe of Action, 34 H.6.37.9 E.4.41.

If a man bring a Replevin of two Cowes, and the other ſaith that they were two Oxen, &c. he ought to avow, although that the taking were at another day. But *Schard* conceives, he may ſay generally that he did not take the two Cowes, and then he ſhall not avow to have return, 13 E. 3. *Rep.*37.

If the Plaintiff count that he doth yet detain them, and the Defendant may ſay, that they are delivered, he ought alſo to anſwer to the taking, 25 E:3 *Rep.*34.

If the Plaintiff bring a new Replevin, where he ought to have a ſecond deliverance, the Defendant ſhall have Return without making Avowry, 21 E:4.7. And the Defendant may well ſay, that the place where, &c. is neither Town, nor Hamlet, &c. without making Avowry, 4 E: 3. *Gager deliverance* 9.

III. *Where in a Replevin after it is removed by* Pone, *or* Recordare, *a ſpeciall Writ ſhall iſſue to warn the Plaintiff, and what ſhall be done if the Plaintiff or Defendant do not appear at the day of the* Pone *or* Recordare, *and how it ſhall be removed.*

A Plea was removed at the Suit of the Defendant by *Pone*, and the Writ was, *Dicas prædicto* the Defendant, where it ſhould have been *prædicto* the Plaintiff: And becauſe the Plaintiff was not warned, a ſpeciall Writ was awarded, 3 H:6.3. *Rep.*2.

The

The Sheriff returned the *Pluries* into the Kings Bench, *Quod fecit deliberac*, and that no other Writ came to him: and now the Plaintiff did not appear: And it was in a manner agreed, that this Court is now ceased, and the power of the Sheriff determined; and if it be so, that the *Pluries* doth not give day to the Plaintiff nor Defendant, as the *Pone*, or *Recordare* doth, *quære*, if the Defendant may Non-suit the Plaintiff, or that speciall proces shall go against the Plaintiff. But by the Argument after as appears in the Book at large, the plea did remain with the Sheriff, because he had served the writ, 2 H:7.5. *Rep*:16. *Knivet* agrees, 43 E:3 26. *Rep*:31. And if the Plea in the Common Pleas, *quære* what shall be done, because the *Pleges de prosequend.* cannot recover, nor are returned, *M*:6 H:7.5.

Upon the *Pluries* not returned, the party had a writ to the Coroners, to attach the Sheriff, and to make delivery, &c. who returned the Sheriff attached, and that he had found sureties, and that the Cattell were esloigned, &c: for which Distress was awarded against the Sheriff, & *Withernam* against the Defendant, and Issues returned against the Sheriff, and the *Withernam* served, but none appeared to take the Cattell: *Knivet*, The power of the Sheriff is determined upon the *Pluries*, and the Coroners have not power to hold plea in the County by the writ to them, but only to make deliverance, but here he hath day upon each of the writs by the Rent, and so it shall be determined here: And because the Defendant was in Court, ready to make deliverance, the Plaintiff found suretires to prosecute, &c: And a writ to the Sheriff to deliver the first beasts, and to attach the party, and upon that returned shall plead with the party, and recover his damages, if there be cause, &c: but no delivery of the *Withernam*, 43 E:3. 26: *Rep*:31.

Replegiare removed by *Pone* at the suit of the Defendant, and afterwards he would have pleaded that the Plain: was Non-suit in Court, where the Bayliff of the liberty had Conusance of Plea of *Withernam*, and he could not have the plea, because the Remover is his own Act, and if he make default afterwards, because his appearance is of Record in the Chancery, Grand Distresse shall issue forth against him, and if he say nothing, he shall be as not Defendant: and if the Plea had been removed by a *Recordare*, *Pone pervadios*, should have issued forth against him, *M*:9. *E*:3 *Rep*:37.

A Plaint was removed by *Pone* at the suit of the Defendant, and at the day the Plaintiff was called in this Form; *I. P.* Thou losest thy writ, &c this is good, although it was not by Writ; and upon default he shall be Non-suit without proces against him, as if it were by Writ, and removed by the Defendant by *Pone*, or *Recordare*.

But if the Defendant who removed it had made default, Distress and Proces out of Outlawry had been against him, but if he maketh default when the Plaintiff removes the Plea by *Pone*, or *Recordare*, *Pone* shall issue against him who is attached, and Distress, and Proces of Outlawry,

At the *Pluries* the Sheriff doth return that the Cattell are eſloined, and the *Withernam tardè*, and the defendant appeared, and the Plaintiff ſhall not declare againſt him, which he ſhall do of a *Withernam* out of the Chancery returnable in the Kings Bench *&c.* but here no pledges are returned, and the *Pluries* doth not give day to the partie, but unto the Sheriff to anſwer to the contempt, and if he return *elongata*, the party may averre the contrary, but the Defendant hath not day by the *Pluries*, but by the *Withernam*, and here the ſame is not ſerved, for which cauſe he ſhall not declare *&c.*

But if the *Pone* to remove the Rent be returned *tardè*, yet the Plaintiff ſhall be compelled to declare *&c.* 22 H.6. *Jour.* 34. 3 H.6. *acc.*

One diſtrained in the County of *B.* and drove the Cattell to the Honor of *W.* where *&c.* in the County of *Berks*, the Plaintiff ſued in *W.* and the Defendant ſued a *Recordare &c.* and at the day the Plaintiff appeared, and the Defendant made default, and Proceſſe awarded againſt him in *Berks*, and upon *Nihil* returned, *Capias* and *Exigent* awarded, the defendant did alledge that the *Exigent* did not lie, being awarded into another County, then where the taking was, and that ſeemed to be the opinion of the Court, for he was bailed, but becauſe he had appeared, he was forced to anſwer, becauſe the Originall was well ſued &c. *P.* 29 E. 3. *Proceſſe* 216.

IV. *Barre in a Replevin or ſecond Deliverance.*

IT is a good Plea in a Replevin to alledge the property to be in a ſtranger, and not in the plaintiff, but not ſo in Treſpaſſe, 20 *H.6. Reple.* 5. 33 *E.* 3. *Repleg.* 44. the Defendant ſhall have good anſwer to the taking at the day ſuppoſed by the Plaintiff in a Replevin, *M.* 13 *E.* 3. *Repleg.* 37.

In a *Replegiare*, the Defendant was received to ſay, that he did not take the cattell, and yet the opinion was, that he ſhould anſwer to the deteining of them, *P.* 5 *E.* 2. *Repleg* 21.

Repl. againſt *C.* and others, *C.* ſaid, that he did not take &c. the others did juſtifie in the Right of *C.* and agreed, that they ſhould not recover, although the juſtification be found, becauſe *C.* had denied the taking &c. 22 *H* 6. 53. See 42 *E.* 3. 6. that he who hath denied the taking ſhall not joyn in aid to the others who juſtifie in his Right.

Replegiare, The Defendant ſhewed that in a plaint of the ſame Cattell, and taking he claimed property, for which it was abated, and the plaintiff ſued *proprietate probanda*, and the property found for us, yet the plaintiff was received to averre, that they were his cattell, and not the cattell of the Defendant, H. 32 *E.* 3 *Repl g.* 35.

The Plea was removed for the Plaintiff, notwithſtanding property claimed by the Defendant, and becauſe the Deliverance could not be made

made property being claimed, and properly could not be tried without a Writ, a *Replegiare* was awarded to the Sheriff, and at the *Alias, vel Cauſam*, he returned that property was claimed by the Defendant, upon which a Writ to trie the property was awarded, and the ſame found to the Defendant, yet he was driven to anſwer to the Plaintiff before that triall of property was of Record in the Court, 30 *E.*3. 22.*Repleg.*36.

See this 44 *E.*3.18. and the Defendant claimed property here, as the beaſts of his villain, *Replegiare*, declaring of three Laſts of Herrings taken in a Ship, the Defendant doth claim them as Wreck of the Sea &c. property now is not traverſable, but he may plead any thing, which proves them not to be Wreck, as that the defendant took them out of the cuſtodie of the Marriners, and the iſſue was upon it, 5 *E.*3.3. *Repleg.* 41. 21 *E.*4.76. That claim of property before the Sheriff upon a writ, ſhall not abate the Writ, but the ſame ſhall be tried by another writ.

In a *Repleg.* againſt him who had a return of the ſame Cattell irrepleviſeable upon a Non-ſuit in a ſecond deliverance, the defendant did claim property becauſe of that Return, and the ſame was found againſt him,for which an Attachment was awarded, notwithſtanding that he had Return irrepleviſable, *T.*19 *E.*2. *Repleg.* 26. But ſee where a man doth avow for damage feaſance, and hath a Return &c. he ſhall hold the Cattell, untill bounds be made, and if he refuſe the amends, the Plaintiff ſhall have a Writ to the Sheriff to inquire &c. in the preſence of the parties, *ſi intereſſe voluerint*, what damages he hath, and if the Plaintiff make to him ſufficient amends according, at the triall, the other ſhall deliver him his Cattell, *ſecundum valorem*, which was at the Return awarded, *P.* 16 *H.*6. *Return des avers*, 2 *M.*31 *E.*3 *Reception* 5.

It is a good Plea, that the beaſts belong to the Plaintiff and a ſtranger in common, and it was holden that the Tenant ſhall have a Replevin againſt his Lord after he hath his Cattell again, becauſe he could not have an action of Treſpaſſe againſt him for the taking, 33 *E*:3:*Replevin* 44. *temp.E*:1:*Repleg*:28. 13 *H.*7.28.

If the owner tenders amends for damage feaſance, yet in a Replevin he ſhall not recover damage for the taking, but for the reteining; for they are two warnings and two anſwers muſt be to them, *temp*: E.1. *Repleg.* 27.

The defendant ſaid, that he bailed the goods to the Plaintiff to rebail to him when he ſhould be required, and that the Plaintiff carried them to *D.*and that he retook them, it is no plea that he did not give colour, becauſe he hath not intereſt, otherwiſe it ſhould be, if he had given him an intereſt for a certain time, or upon condition, 5 *H.*7.18.*Colour* 33.

The defendant avowed for ſome of the Cattell damage feaſance, and that the others followed, the Plaintiff did alledge tender of amends, and upon that *Horton* conceived, that he ought to have had detinue, and not Replevin, 13 *H*:4: 19: *Hill* agrees, 13 *H*:4:14 yet it was one taking, and by the following &c.

V. *Count*

V. *Count in a Replegiare.*

IN a *Replegiare* of two oxen, the defendant upon Non-ſuit had a Return, and the Plaintiff did eſloin the beaſts, ſo as the defendant had two Cows in their ſteads, and afterwards the plaintiff did remove the Plea by *Pone*, if the Plaintiff declare of the firſt taking, it ſhall be of two oxen, and not of the Cows taken in the ſteads of them, &c *Parn.* ſaid, that upon that matter the Plaintiff ought to have a new *Replegiare &c.* and declare of the two Cows of the ſecond taking, and *Thorp* ſaid. that he ſhall declare from the day of the Return awarded, and not from the day of the firſt taking, and ſo the day is traverſable, *M*:13:E: 3: *Repleg.* 37.

Upon the like Return of two Bullocks in the ſteads of two oxen eſloins, the Plaintiff ſued a Replevin of the two Bullocks, and upon the matter he was driven to amend his declaration (s) of Oxen, and that was by ſufferance after the Entrie *&c*: *M*:33 E: 3: *Avowrie* 256. and when he declares of the firſt taking, it ought alwayes that the Avowrie be made of the ſame taking, *M*:2:E:3: *Avowrie* 171.

In *Replegiare* o Cattell taken in *D*: (s) in *A*: and *C*: he need not alledge how many beaſts he took in one place, and how many in the other, 20 H.6. *Repleg.*6. See that he ſhall ſhew the ſame, 29 *E.*3 *Avowrie* 250. There it was in ancient Demeſne.

The Count was good of three ſeverall takings, in three ſeverall places, *P.*16 *E.*3. *Avowrie* 158.

The Defendant ſueth a *Recordare* to remove a Plaint betwixt divers Plaintiffs and divers Defendants, the Plaintiff would have declared upon ſeverall Declarations, one of two beaſts, the other of three &c. and he was not permitted ſo to do, becauſe there was but one Plaint removed, and by one Writ, and if there be ſeverall Plaints, they ſhall remain in the Court where they were, 3 H.7.14.

It ſhall not be entred into the Roll, that he took the Cattell and impounded them, and impounded doth detain them againſt Gages and Pledges, as the form of the Count is, but onely *quod cepit & detinet*, 1 E. 4.3. *Repleg.* 11.

A man hath a generall Writ, and declares of beaſts taken, which do belong to another, and the ſame being excepted unto, he did maintain it, becauſe they did manure, and were Levants and Couchants upon the Lands, 42 *E.*3.18. *Repleg.*30.

I ſhall have a generall Replevin of Goods taken out of my poſſeſſion, which were delivered unto me to re-deliver, 21 H. 7. 14. 14 H.4.16.

Upon a Declaration that he doth yet detain, the taking of the Cattell ſhall be put in the Declaration, 12 H.4. *Rep.*20. and upon default of the Defendant

Defendant after appearance he ſhall recover the value of them, in damage, A Declaration of a taking in the high way, is good, 11 *R.* 2. *Avowry* 87.

A Replevin by Executors is good, without ſhewing in the Declaration, if the taking were in the time of the Teſtator, or in their time, becauſe in each Caſe they ſhall recover, 34 *E.* 3. *Avowry* 257.

VI. *What ſhall be done after Property claymed, or tryed.*

AT the *Pluries Capias* in the Kings Bench, the Sheriff returned that the Defendant claimed Property, and upon the *Proprietate probanda*, it was found for the Defendant, and *Markham* was of opinion, that yet the Plaintiff might proceed, becauſe it was but an Enqueſt of Office, and notwithſtanding that Triall, the Plaintiff might have a ſpeciall Property. *Littleton*, Then that ought to be ſhewed before the Sheriff, *Quære* 1 *E.* 4. 9. *Repleg.* 12. But here, if the Property be found for the Plaintiff, the Sheriff ſhall make him deliverance, and further ſhall attach the Defendant to anſwer to the King for the contempt, and dammages to the Plaintiff for the falſe claim, and ſo is the Writ, and then it ſeems upon the attachment, nothing ſhall be debated, but the falſe claim, *Quære* of that, 1 *E.* 4. 9. and *T.* 19 *E.* 2. *Replegiar.* 26. He ſued an attachment againſt the defendant, after *&c.* and there the defendant claimed Property by a Return irrepleviſable before, 30 *E.* 3. *Proprietate probanda* 2.

In a *Recordare*, declaring, that the defendant is yet ſeiſed, the defendant ſaid, that upon a Plaint in the County, he claimed Property, upon which the Plaint was abated by Writ to the Sheriff, the Property being found for him, and demanded Judgement if upon a Plaint abated, this *Recordare* would lie, and the opinion was, that he ſhould anſwer, and that the Plaintiff might averre the Property to be to him, notwithſtanding the Verdict, *H.* 31 *E.* 3. *Repleg.* 35.

But ſee, 30 *E.* 3. where after Property claimed before the Sheriff, the Plaintiff ſued a *Recordare*, and becauſe the Property ſhall not be ſued without Writ, he ſued a *Replegiare*, and the Sheriff returned Property claimed, and ſued *Proprietate*, and found for the defendant *&c.* and now the Plaintiff declared upon the *Recordare* againſt the Defendant, *Fyff.* is not the Writ abated, when the Property is found for the defendant? *Green*, that is not proved by the Record, and that he ſaid, becauſe it was not yet returned, *ut dicitur*, 30 *E.* 3. *Repleg.* 36.

Upon Property claimed in Court in a *Replegiare*, it ſhall be tried here by Verdict, and the Writ ſhall not abate by Property claimed in the Country, but it ſhall be tried by another Writ ſent to the Sheriff, H. 5 *E.* 3. *Replegiar.* 41. See the diviſion *Proprietate probanda* 3. for this matter.

VII. *Where a man ſhall have a Replevin, or Recaption of things not taken, and a ſpeciall Replevin, where he hath not property and Replevin of the Beaſts of another.*

REplegiare, of the Beaſts of his Villain taken *contra pacem*, and *Wilby* awarded the Writ good, though the Lord had not actuall poſſeſſion of them, 19 E:3. *Rep.* 32. But yet ſee that it was there ſaid, that the Villain might have ſold the goods before, and then no remedy for the Lord: And there Iſſue was taken, if the property of the Goods were in the Villain or a ſtranger, as the Defendant alledged. So if the Defendant claim property, and this bringing of a Replevin by the Lord of the Cattell of his Villain, is a claim of property. The ſame Law where a man brings a Replevin of the Beaſts of his wife taken before marriage, *T*: 33 *E*:3. *Rep*:43.

Executors ſhall have a Replevin of goods, taken in the life of the Teſtator, and ſhall recover damages, 34 *E*:3. *Avowry* 257. 18 *E*:2. *Rep.* 24.

A *Replegiare* was of a Sow and Piggs, As to the Sow the Defendant did avow for Damage-feaſant, and as to the Piggs, that he did not take them: And as for the Sow, it was found for the Avowant; And as to the Piggs it was found, that at the time, *&c.* the Sow was with Pigg, who farrowed in his poſſeſſion. And as to the Sow, the Plaintiff took nothing by his Writ, but recovered damages for the Piggs, for the deniall, 22 *E*:4, 5. 18 *E*:3. 48. But *Littleton* ſaith, That if the Sow had not been with Pigg till after the taking, the Plaintiff ſhould not have recovered damages, *&c.* *Quere* 12 *E*:4. See ſuch matter of ſecond deliverance, 26 *H*:8. 6. 22 *H*:7. 6.

VIII. *Where and in what place Surety ſhall be taken to purſue*, &c. *and to return the Cattell.*

AT the *Withernam*, the Coroners did return, that they had taken, *&c.* but that none came for the Plaintiff, and now the Defendant came, remedy to Gage Deliverance of the firſt taking; Now the Plaintiff put in ſureties to proſecute, and to return the Cattell, if, &c. And had a Writ to the Coroners to have Deliverance to him; And the Cattell which were taken in *Withernam*, did remain with the Sheriff, untill it appeared that the Plaintiff had his Beaſts, 43 *E*:3. 26. *Rep.* 31.

In a Replevin, the Defendant claimed the Plaintiff for his Villain as regardant to a Mannor in his Cuſtody, by the Grant of the King: And he did not find ſureties that he ſhould not diſtrain, for Bond-ſervice pending the plea, 13 H:4. *Surety* 12. 13 H:7. 17.

In

In a *Homine Replegiando*, they were at iſſue, if free, or not free: And the Plaintiff finding ſureties that he would deliver his body and goods, if he were found Villain, had a Writ to have his goods. 5 H: 7. 3. *Gager Deliverance* 11. is contrary of the goods. But for the body each ſhall give ſecurity to the other in an Action upon the caſe, 13 H:7.17.

In a Replevin, the Plaintiff declared that the Defendant did yet detain, *&c.* The Avowant did Gage Deliverance and the Plaintiff did not find Sureties in Court to return, &c. but before the Sheriff, but of Pots and Pans, after which the Defendant made Deliverance in Court, the Plaintiff did find ſureties in Court, *M.* 5 H 7.9.

IX. *The Count in ſecond Deliverance, and where he ſhall declare of the firſt, whereof the ſecond taking.*

IN a ſecond Deliverance, the Plaintiff declared of a taking in another place, then he had declared before, and good; but the other might aver the taking where he firſt declared, 17 *E*:2. *Rep*:22.

So it was ſaid, he may declare of another place, and of another taking, 16 *E*:3. *Aide* 131. and 6 E:3. *Monſtrans &c.* 22. But *Herle* there ſaith, That this Writ is warranted out of the Roll, and not from the Originall, and it ought to agree with the Roll. But *Martin* and others ſaid, If the Plaintiff be Non-ſuit after Declaration, he ſhall not vary from the place, day, or number, *&c. M*: 3 H:6 9. *Count* 3. 12 H.7.6: *acc.* If there be not Eſtoppell againſt Eſtoppell, as a Count in one place, and the Defendant doth avow in another, *&c.* 26 H:8.6. He may well demand money, this in a ſecond Deliverance, (*s*) thoſe, the taking of which, the Defendant hath avowed in a Replevin: And if a Bullock taken be now an Oxe, he may vary in that alſo.

In *Replegiare* againſt husband and wife, he had Aide of his wife, and being Non-ſuit, brought a ſecond Deliverance in his own name, and the name of his wife. 18 *E*:2. *Rep.* 23. *Quere*, for it was doubted if he ſhall have Aide in this Writ.

X. *Second Deliverance, or new* Replegiare, *and of what taking, and where a ſtranger ſhall have ſecond Deliverance,* Weſt. 2. Cap. 2.

IN a Replevin, The Defendant hath a Return adjudged him upon a Non-ſuit, and hath other Cattell in the ſtead of thoſe eſſoined. Now if the Plaintiff bring a ſecond deliverance, it ſhall be of the firſt taking, and

of the ſecond he ſhall have a new Replevin, and ſhall declare upon it, *M.* 13 *E:*3. *Repleader* 37. 33 *E:*3. *Avowry* 256.

Upon Non-ſuit in ſecond Deliverance, return irrepleviſable is awarded; and the Plaintiff brings a new Replevin, the Defendant claimed property by that Return, *T.* 19 *E:*2. *Rep.*23. but Second Deliverance upon Non-ſuit in a Replevin. So upon a Non-ſuit in a Replevin in the Country, duely or not duely removed, he ſhall have a ſecond Deliverance here, *M:*7. *E:*4. *Admeaſurement* 2.16 *E:*3. *Aide* 131.

Before the Statute, he ſhould have had a new Replevin out of the Chancery, but afterwards a ſecond Deliverance out of the Rolls of the Juſtices, *M:* 6 *E.*3. *Monſtrans* 22.

In a Replevin, the Defendant ſaith, that the property was to one of the two Plaintiffs, and avow upon it, the Writ abated, and he had return: Now the other ſhall have a new Replevin. not a ſecond Deliverance, becauſe the return was adjudged upon a Writ abated, not upon a Nonſuit. Alſo the return is not irrepleviſable, becauſe upon a Writ abated, not upon Avowry.

XI. *Where a man ſhall have a ſpeciall Writ to have his Beaſts againe, after the Defendant hath Return irrepleviſable*, Returno habendo, & Sicut alias, *where a man ſhall have, where not.*

THe Avowant had a Replevin, and *Returno habendo* iſſued, the Plaintiff ſued a Second Deliverance, upon which the Sheriff returned, that he did not find pledges, nor of *returno habendo*, the Plaintiff prayed a *Sicut alias*, becauſe the other Writ was not ſerved. *Coteſmore*, By the ſecond Deliverance, it appeareth that you are poſſeſſed. *Hewſter*, Not ſo, for the Plaintiff uſeth preſently upon return awarded to have a ſecond Deliverance, and upon the view of this Writ the Sheriff would not make return, 3 H:6. *Rep.*3. And note that the *Returno habendo* is not returned.

Replevin againſt *C.* and *B.* *C.* ſaith, that he did not take, *B.* juſtifies in the right of *C.* he ſhall never have return.

XII. *Replevin by Plaint before the Sheriff, where, and how he ſhall make it, and enter it.*

IF my Beaſts be taken in the Country. upon complaint unto the Sheriff, and ſecurity of return, and to proſecute, he ought to grant me a Replevin preſently, and my Plaint ſhall be entred preſently, and the Sheriff may do it in any place, his Hall, Chamber, &c. but day of plea ſhall be alwaies in the County Court, 4 *E:*.4. *Rep:*14.

And

And if the Cattell taken be within a Liberty, and the Bayliff will not make Replevin, the Sheriff may enter the Liberty to do it by the Statute of *Marlebridge*, *cap*:22. And a Replevin may be in one County, where the taking is in another, ſee *Diviſion* 2.

RECAPTION.

I. *Where a man ſhall have Recaption before Avowry made.*

RECaption, and declared that he had diſtrained the ſame Beaſts for the ſame cauſe for which he hath avowed; and it was holden that the Writ lyeth as well before Avowry, as after, and it is iſſuable, if for the ſame cauſe, &c. it may be tryed by the Country, 9 H:6.1.*Recaption* 1.45 *E*:3.4.11 H:6.8.*Recaption* 2.47 *E*:3.7. *Recaption* 4. But *Thorp* held, that it doth not lye before Avowry, becauſe the cauſe of the taking cannot be tryed before. *M*:31 *E*: 3. *Recaption* 5.

II. *The forme of the Writ, and Count in a Replevin.*

THe Writ is good which doth ſuppoſe the Diſtreſs *contra pacem & contra Statutum*, although that the Defendant be Lord: And counted that the Defendant did diſtrain him ſuch a day, and in ſuch a place, and becauſe he ſued a Replevin by Plaint, and that the Defendant did avow in the Country becauſe he held, *&c.* And that the Plea being removed into the Common Pleas, he did diſtrain again for the ſame cauſe, the ſame beaſts in the ſame place: And all this is good, 9 H:6 1.*Recaption* 1.*M*. 31 H:3.*Recaption* 5. and he need not ſhew the cauſe certain in the Count, 11 H.6.8.*Recaption* 2.

Recaption againſt many, one did alledge that before the ſecond taking ſuppoſed, they were Non-ſuit in a Replevin, the other ſaid that no Judgment was given untill the other taking, and before Judgment was not

not abated by the Non-ſuit, and after Non-ſuit the Plaintiff might tender agreement, and have a Writ to make deliverance, *M*: 31 *E*: 3. *Recaption* 5.

But *Fitz.* ſaith, That if the Plea be Non-ſuit, the Lord may diſtraine again and no Recaption lyeth, *F. N. B.* 72. Of the Writ abated for Non-ſuit, ſee 40 *E*: 3. 38.

In a Replevin, they were at iſſue upon a Plea, in abatement of the Writ, and depending that the Plaintiff brought Recaption, after the Replevin was abated, and therefore the Recaption alſo abated, *t. E.* 1. *Recaption* 11. *F. N. B.* 71. 2:

III. *Who ſhal have Recaption, and of what thing, and when it ſhall be brought.*

F*Inchden* ſaith, That a Recaption lyeth as well upon a Diſtreſſe for Damage-feaſant, as between Lord and Tenant, *Quod alii conceſſerunt*, 47 E: 3. 7. *Recaption* 4.

But *Fitz.* holdeth the contrary, becauſe it cannot be one cauſe, 71 *E.*

But a ſtranger ſhall have a Recaption if the Lord of the Land take his Cattell twice for one cauſe, which he ſhall not have if one taking were of others Cattell, 34 *E*: 3. *Recaption* 12.

Recaption lyeth upon a Diſtreſſe for Suit royall at the Leet, 31 *E*: 3. *Recaption* 5.

Upon a Diſclaimer in a Replevin, Recaption was brought, 47 *E*: 3. 7. If the Lord diſtrain the Cattell of his Tenant, and afterwards the beaſts of a ſtranger for the ſame cauſe, no Recaption lyeth, 10 *E*: 2. *Recaption* 10.

If a man diſtrain two, and afterwards doth diſtrain one of them for the ſame cauſe, he ſhall have Recaption; 12 *E.* 1. *Recaption* 13. But if he firſt diſtrain the Tenant, and afterwards takes his Cattell, and the Cattell of another man, which they have in Common for the ſame cauſe, no Recaption lyeth, becauſe they muſt joyn in Action, and that they cannot do, by *F. N. B.* 72 *E.*

The Lord ſhall have Recaption of the beaſts of his Villain which are diſtrained again, if he himſelf had ſued a Replevin before, 19 *E.* 3. *Recaption* 9. and *Rep*: 32. And there Iſſue was taken upon the property of the Cattell, if they were the Cattell of a ſtranger: And yet Recaption lyeth, although that other beaſts are taken, and not the ſame which were firſt taken by Diſtreſſe, *F. N. B.* 72 *G.*

IV. *Bar*

IV. *Barr in Recaption, and what thing he ſhall recover.*

IN recaption, the Defendant ſaith, That the firſt taking was for homage, and that this is for Rent, and a good barr, and that nothing is behind, will not maintain the Action, 45 *E.* 2. 4. *Recaption* 3.

So if he ſaith, That this taking was for rent due at another day, and it is not materiall, althongh he cannot maintain the cauſe ſufficient for a diſtreſs, ſo as hee maintain the taking for another cauſe, *&c.* and in this Writ the Plaintiff ſhall recover damages for the contempt, not for the taking, &c. 47 E. 3. 7.

In a recaption, the Defendant ſhall not make avowry, nor ſhall have Return, but ſhall only excuſe himſelf of the contempt, and although the plaintiff hath diſclaimed or pleaded, out of his fee in a Replevin, yet in a Reception he ſhall be driven to this iſſue, if hee took the cattell for the ſame cauſe *&c.* for out of his fee is no plea in this Writ, although the Lord do juſtifie for rent, *&c.* 47 E. 3. 9. *vi.* 8 *R.* 2. *Recaption* 8.

Where the Lord juſtifies for another cauſe, as for beaſts taken out of the poſſeſſion of the Plaintiffs Villeines, hee ought alwayes to traverſe, without that, that he took them for the ſame cauſe, and the Plaintiff ſhall not be put to anſwer to the ſecond cauſe, but ſhall maintain that it was for the ſame cauſe *M* 31 E. 3. *Recaption* 5.

If pendant the iſſue upon, out of his fee pleaded in Replevin, another day do incur, it ſeems that in recaption the Lord cannot juſtifie for another cauſe, becauſe it ſhall be yet intended out of his fee *P.* 18 *R.* 2. *Recaption* 8. But ſee 47 E 3 7. ſeems to be contrary, but if the iſſue had depended upon this, (*s*) nothing behind, or levied by diſtreſs had been pleaded, and another day had incurred, he might diſtraiu for it; by *Fitzherbert N. B.* 71. *M.*

Where 12 *d.* was due pending a Replevin, the Lord did diſtrain again, and in Recaption, ſaid, that the firſt diſtreſs was but for 4*d.* and now he diſtreined for the reſidue, and he was forced to the iſſue, if the firſt diſtreſs was for the whole 12 *d. P* 28 E 3 3 *Recaption* 6. See that this ſeems to be contrary to 18 *R* 2. and alſo to *Fitzh. N. B.* for here alſo the iſſue firſt was upon, out of his fee.

The Defendant being convicted before the Sheriff in the Country in a Recaption, ſhall be amerced and pay damages, but being convict before the Juſtices, he ſhall be fined and pay damages. *F. N. B.* 73. *D.* ſo a Recaption lyeth upon a plaint in the Country, not removed, and ſhall be directed to the Sheriff by *Fitzh. N. B.* 73.

V. *Recaption*,

V. *Recaption upon Conuſance granted.*

IN a Recaption, the Bayliff did demand conuſance, and failed to do right, and becauſe there is no Writ for the Lord to remove the plea, he diſtrained again, and the Tenant ſued recaption in the Kings Bench; reciting the whole matter, and it was good, *Quære* for it was not purchaſed *Pendente placito, &c.* 14 E. 3. *recaption* 7.

Fitzherbert ſaith, That the Recaption lyeth, becauſe the Lord might have removed the Plea by Reſummons, *Folio* 72. *f.*

WJTHERNAM.

I. *Where* Withernam *ſhall be awarded and where not, and when it ſhab be awarded.*

Withernam ſhall not be awarded upon return, that the beaſts are eſloined at the *Pluries*, &c. if the Defendant doth appear at the return, and his appearance is recorded, 7 *E.* 4 15. *Withernam* 1.

If the Defendant ſueth *Returno habendo*, upon a Nonſuit of the Plaintiff, and it is returned that the Cattell are eſloined, now a *Withernam* ſhall not iſſue forth untill a *Scire facias* be againſt the pledges, 7 *R.* 2. *Withernam* 11.

If a man recover dama. in Aſſiſe, or in a writ of right in ancient demeſn in the nature of an aſſiſe, and the Bayliffs take the Beaſts of the Defendant and ſelleth them, and payeth the plaintiff, and the Defendant ſueth a Replevin, upon return that the Cattell are eſloined, he ſhall have *Withernam*, which hee ſhould not have had if the Sheriff had returned the ſpeciall matter, 7 *H.* 4 *Gage Deliverance* 1.

If the *Withernam* be not executed, and the Defendant appeareth, and pleadeth, that he did not take the cattell, now the Plaintiff ſhall not have *Withernam*, 17 *E.* 3. 1. nor ſhall he gage deliverance.

In Avowry, the Plaintiff prayeth, that the Defendant may gage deliverance,

rance, the Defendant ſaith, that the Cattell are dead, now the Plaintiff ſhall not have *Withernam*, but it is to be enquired, through whoſe default the cattell dyed, 19 *E.*3. *Withernam* 8.

II: *Againſt whom* Withernam *lyeth:*

VVIthernam erroniouſly awarded againſt the Defendant, where he appeared, and before *Superſedeas*, the Sheriff had delivered the beaſts to the Plaintiff, and was returned by the Sheriff, and that alſo hee would have taken them from the Plaintiff, and have delivered them back to the Defendant according to the *Superſedeas*, and that the Plaintiff had eſloined the beaſts, and the Defendant appeared and pleaded that he did not take the cattell &c. and had a *VVithernam* againſt the Plaintiff, if he would not gage deliverance, 7 *Edw.* 4. 15. 26 *Hen:* 6 *Gage Deliverance*, 15.

In a Replevin, Iſſue was taken upon the property, and becauſe the Plaintiff had beaſts of the Defendants in *VVithernam*, he gaged deliverance and the Defendant had a Writ to have the Cattell delivered to him, and the Sheriff returned that the cattell were eſloined, and *VVithernam* awarded, and becauſe he had nothing, a *Capias* and *Exigent* iſſued againſt the plaintiff, *M:* 11 *H:*4: *Proceſs* 124.

Return is awarded upon return, that the Cattell are eſloined, the Plaintiff ſhall have a *Scire facias* againſt the Pledges, or *Withernam* againſt the party, and *VVithernam* lyeth at the common Law, againſt the Defendant 5 *H:*5: *Proceſs* 125.

III *VVhere the Cattell taken in* Withernam, *ſhall be delivered to the Plaintiff, where not.*

UPon *Withernam*, the Sheriff ſhall keep the cattell, and ſhall not deliver them to the Plaintiff, and when the Defendant hath delivered back the firſt cattell which he took, he ſhall have his cattell again, *M:* 2 H:4:10: But in the Kings Bench the courſe is to deliver them to the plaintiff.

A *Withernam* was not delivered to the plaintiff, becauſe he was not in the Country, and ſo returned:

Now the Plaintiff prayed a Writ to have *Withernam* delivered unto him, he ſhall not have it, if the Defendant appear, and be ready to gage deliverance, but the party had a Writ to have the cattell which were firſt taken, and if he cannot have them, then he ſhall have delivery of the *VVithernam*, and a Writ for damages for the delay, and in the mean time,

the cattell ſhall remain with the Sheriff, or Coroner, who ſerved the Writ 43 E:3:26. *replevin* 31.

IV. Of what thing a man ſhall have Withernam.

Capias in *Withernam*, againſt a Peer of the Realm, upon a return that the Cattell were eſſoined, and now iſſue upon villeinage, and the plaintiff delivered to the Marſhall, and now he prayed a *Capias* againſt ſome of the Defendants who did not appear, and could not have it, becauſe delivered 11 *H.4*, *Withernam* 4, But he had a *Pone per vadios*, and upon default of the Defendant, it not being found, the Plaintiff had his Cattell in *VVithernam*, and ſee there, that the Defendant ſhall have *VVithernam*, of the Plaintiffs cattell.

Diverſe beaſts were taken in *Withernam*, whereas the Replevin was but of one beaſt, 22 H:6 *Withernam* 7.

If a man ſueth a Replevin of pots and pans, *VVithernam* ſhall be of goods to the value, 31 *E.3. VVithernam* 9.

The Sheriff in the Country may award *Withernam*, to take to the value, not to the number &c, 21 *H:6. VVithernam* 10.

V. *Where* Withernam *ſhalbe awarded to the Sheriff.*

THe Sheriff may well award *VVithernam*, upon a plaint before him in the Country, 9 *E.4 VVithernam* 2. and that upon return of his Bayliff that the Cattell are eſſoined, but he ought firſt to enquire of the enqueſt, if the Return be true; but the proceſs in this *VVithernam*, is *Alias* and *Pluries*, *& ſic infinitum*, and no proceſs of Outlawry lyeth, as it doth in the Kings Bench, *Fitzherberts Natura Brevium* 7421 *H.6: Gage deliverance* 13.

VI. *Proceſſe in* Withernam.

Withernam upon return, the Cattell are eſſoined, and upon that return, that *Non habet averia*, the Plaintiff may have *Sicut alias de averijs & cattallis*, *M.28. Ed.3: VVitherntm* 6. See *Withernam* 4. If the Sheriff ſend to the Bayliff of the Franchiſe who doth not make deliverance, but that returned, *VVithernam* ſhall iſſue forth with *Non omittas*, by *F.N.B.* 74.

And *VVithernam* lyeth againſt the Plaintiff for eſſoining the Cattell of

of the Defendant, with diſtreſs to anſwer unto the King for the contempt & to the party his damages; and although he wil be non-ſuit in the Replevin, yet the Defendant ſhal declare againſt him upon the Diſtreſs, *P.* 26 *H* 6. *Gage Deliverance* 15.

PROPRIETATE PROBANDA.

1. Upon Property claimed, in what Court or place the Proprietate Probanda *ſhall iſſue, and where it ſhalbe returned.*

IF in a Replevin the Defendant claimeth property before the Sheriff, no deliverance ſhall be, and the property ſhall not be tried without a Writ, and the Writ, *De prorrietate probanda* doth not lye upon a Plaint, for which the Plaintiff did remove the plaint by *recordare*, and upon that iſſued forth *Proprietate probanda*, and it was found for the Defendant, and the Plaintiff counted upon the *recordare*, 30 *E.* 3. *replev.* 36: and ſee the plaint abated upon property claimed, 31 E. 3: *replegiare* 35.

Replevin in the Kings Bench, the Sheriff returned, the property was claimed, and a *Proprietate probanda* awarded, 1 E. 4. *repl.* 12. But ſee that Property claimed in the Court ſhall be tryed by iſſue without a Writ, 5 E 3. *repl.* 41. 21 E 4 76: *recordare* ſhall be good upon a Plaint abated before by *Fitzh*: 71.

Upon property claimed before the Sheriff, his power is ended, be it by plaint or Writ, but if by Writ he ſhall have *Alias*, *Pluries*, *vel cauſam*, *&c.* and upon return that the party claimes property, *Proprietate probanda* ſhall iſſue forth returnable in the Chancery, or the Kings Bench, &c. and 2 Ed 3: *Proprietate probanda*, iſſued, where the parties did appear in Court: but it ſeems the property ſhall be tryed by iſſue there, and the Writ ſhall not iſſue forth, but return of the Sheriff, 30 E. 3. *Proprietate probanda* 3.

II. Where Tryal ſhall be of the property at the time of the taking, where at the time of the Claime, where after the taking.

IN a Replevin againſt three, the Sheriff did return, that two did diſtrain &c. as Bayliffs for the Kings Debt, and ſold the Cattell to the third, ſo

he claimed property. *Markham*, *Proprietate probanda* ſhall iſſue forth, although the property did accrue after, for the Sheriff cannot return the ſpeciall matter, but generally, that he claimeth property, as he ſhall not return, that the cattell are taken for an execution of a recovery &c. *Quere*, *Forteſcue*, If I take my neighbours cattell now upon property claimed and found in *Proprietate probanda*, the cattell ſhall be delivered unto him, &c. *M.* 31 *H.* 6. *Proprietate probanda*, 4 And it is ſayd, That a man ſhall not claim property if he had not property at the time of the diſtraining of the cattell, *M.* 2 E. 2. *Avowry* 178.

III. *What ſhall be done upon property claimed by the plaintiff, or Defendant, and where the plaintiff ſhall have treſpaſs, although the property be found againſt him.*

IT being found for the Defendant in a *proprietate probanda*, yet the Plaintiff ſhall have Treſpaſs, but if he bring a new Replegiare, the Sheriff ſhall not make deliverance, &c. but if property be found for the Defendant upon iſſue in the common pleas, the plaintiff afterwards ſhall not have Treſpaſs *H.* 31 E. 3. *Proprietate probanda* 3. *M.* 31 *H.* 6. *proprietate probanda* 4.

And if upon a Writ of *proprietate probanda* it be found for the Defendant, the plaintiff may count againſt the Defendant, and hee ſhall be received to aver the property to be to him, and not the Defendant, 30 Ed. 3 *Repleg.* 36. and whether the property be found for the one, or for the other, and *Hulls* ſayd if it be found for the Plaintiff, the Defendant ſhall be fined, 11 H. 4 *C. Litt.* 145. *acc.*

IV. *Who may claime property, and ſue* Proprietate probanda, *and where the Defendant ſhall be attached to anſwer to the King and the party.*

IF the ſervant claimeth property for his Maſter, a Writ of *proprietate probanda* lyeth, 11 H. 4. 4: *Proprietate probanda* 1.

But it was adjudged that the Defendant cannot claim property by his bailiff, and the Sheriff ſhall be amerced for ſuch return, 17 E 2 *proprietate probanda* 6. and one Defendant may claim property, 31 H: 6 *proprietate probanda* 6.

See 5 *E.* 3. 38 11 H: 4. 4. 17 E. 2: *proprietate probanda* 6. *C. Litt.* 145. A man cannot claim property in goods by his Bayliff, or ſervant, becauſe if the claim be falſe, he ſhall be fined for his contempt, which the Lord cannot be, if he do not claim them himſelf.

A ſtranger to the Writ, ſhall never claim property, nor ſhall ever have a writ *De proprietate probanda*, but the Sheriff ought to deliver the cattell notwithſtanding his claim, 14 H. 4. 25. *proprietate probanda* 2.

Upon

Upon property found for the Plaintiff, the Sheriff ſhall make deliverance, and ſhall attach the Defendant to anſwer as well to the King for the contempt, as to the party, *M.* 30 E. 3. 30. *proprietate probanda* 3.

Gage Deliverance.

I. *Where the Plaintiff ſhall Gage Deliverance of the* Withernam *taken, and where a Writ ſhall iſſue forth to make Deliverance, without Gager.*

Withernam is delivered to the Plaintiff, and the Defendant attached, The Plaintiff declared, and the Defendant did avow the ſelling of the Diſtreſſe, as Bayliff of Ancient Demeſne, for Damages recovered in a Writ of Right there by *T.* againſt the Plaintiff, the Plaintiff ſaid, that the Land is Frank Fee, and there was a Demurrer upon it, becauſe he had appeared and pleaded there, *&c.* And it was Frank Fee by a Fine levied at the Common Law, whereof the Defendant being Bayliff had no notice, for that cauſe he was excuſed, and had a Writ to the Sheriff to make deliverance, but the Plaintiff ſhall not gage deliverance here, *&c.* But note, *Gaſcoigne* ſaith, If the firſt taking was not lawfull, and the Defendant hath ſold the Cattell, that the Plaintiff cannot have them again, that he ſhall keep the *Withernam* for euer, and ſhall not recover the whole in Damages, but for the taking and detaining, *&c.* *Quære*, for the Defendant had a Writ, *&c.* and pleaded that the land was not compriſed within the Fine, *M.* 7 H. 4 28. *Gage Deliverance* 1.

In a Replevin after *Withernam* delivered to the Plaintiff, they were at iſſue upon property claimed by the Defendant, and the anſwer of the Plaintiff. Now it was holden that the Defendant ſhould have a Writ to make Deliverance of the *Withernam*, without Gager Deliverance of the firſt taking, becauſe property claimed: So if the Defendant plead, that he did not take the Cattell, and it is found againſt him, the Plaintiff ſhall recover all in damages, 30 *E.* 3. 9. 11 *H.* 4. *Proces* 121, there the Plaintiff did gage deliverance.

The

The Defendant doth avow, the Plaintiff prayeth that he may find ſureties to deliver the Cattell, the Defendant ſaith, that the Plaintiff is ſeiſed of his Beaſts in *Withernam*, by a Plaint in the County: And this he may ſay, although the *Withernam* be returned, *&c.* and the one ſhall have deliverance againſt the other, 4 *E*:3. 40. *Gager* 10. *M*: 20 *E*: 2. *Gager* 29. But where deliverance of the *Withernam* is not made to the Plaintiff, if the Defendant come and prayeth that he may gage deliverance, the Plaintiff ſhall have a Writ to make deliverance of the firſt beaſts taken, and ſhall find ſureties to make return, if, *&c. vi. Withernam*, 3 *M*:43 *E*:3 *Rep.* 32. And ſee there, that deliverance of the *Withernam* ſhall not be to the Defendants, untill the Plaintiffs writ be returned.

The Defendant did avow, and ſhewed that by Plaint before the Sheriff, the Sheriff had his beaſts in *Withernam*, and prayed deliverance, *&c.* The Plaintiff ſaid, that he ought not to have untill his beaſts were delivered: And becauſe it appeared by the Plaintiffs Declaration in the County that he had delivery, *&c.* he ſhall gage deliverance of the *Withernam*, although it was ſaid, that nothing that was done in the County is of Record here. But *Newton* conceived that that might be ſhewed by the ſuggeſtion of the party, *P*:21 H:6. *Gager Deliverance* 13.

The Defendant prayeth deliverance of the *Withernam*, the Plaintiff may well joyn iſſue, that he did not take them, 20 *E*:2. *Gager* 29. which is not Law, but a Writ ſhall iſſue forth to make deliverance, *Si conſtare poterit*, *P*:26 H:6. *Gager* 15. 40 E:3.40.

II. *Where the Plaintiff ſhall Gage Deliverance to the Defendant firſt, and where the Defendant to him*, &c.

IT ſeems, where the Plaintiff hath the beaſts of the Defendant in *Withernam*, and the Defendant doth appear and avow now he ſhall not gage deliverance of the Cattell firſt taken, untill the Plaintiff hath gaged deliverance of the *Withernam*, 4 *E*:3.40 *acc. vi.* 3 *Eliz. Dyer* 169. 11 *Eliz. Dy.* 280. 22 H 6. 20. 5 H. 7. 5.

III. *Where the Defendants ſhal gage Deliverance in a Replevin, and what ſhall be a good Counter-plea for him of the Gager*, &c.

IN a Replevin the Defendant doth avow, the Plaintiff prayeth that he Gage Deliverance, and that he ſhall do, notwithſtanding that he alledgeth that he hath made Deliverance in the Country, *&c.* 7 *R.* 2. *Gager*, *&c.* 2.

So

So if he alledge it made by Writ, but the Plaintiff ſhall have a Writ to make deliverance, if, &c. *M.*15 *E.*3 *Gager* 4.25 *E.*3.*Gager* 8.

So if he ſay generally that the Plaintiff is ſeiſed, &c. 3 H.6.15.*Gager* 11.

And if upon the Writ to make deliverance, the Sheriff return that they are eſloined, a *Capias* ſhall iſſue and not *Withernam*, and all ſhall be recovered in damages, 22 H.6.*Gager* 14.

But ſee where the Defendant ſaith, that deliverance is made, *&c.* the Plaintiff may ſhew how that he had deliverance in the Country by plaint, but that afterwards becauſe he was Non-ſuit the Defendant had return, &c. And the Defendant may aver, did make return unto him. So note, no Avowry where the Sheriff doth not deliver the beaſts to the Defendant upon a return awarded, *P.*25 *E.*3.*Gager* 8.

Note, the Defendant ſhall gage deliverance, although the Plaintiff grant that he diſtrain and retain againſt Gages, & Pledges, untill he be ſatisfied, &c. 31 *E*:3.*Gager* 5.

And note, that all the caſes before are to be intended when the Plaintiff declares, upon this, that he doth yet detain, and the Defendant doth avow, &c. 4 *E*:3.40.*Gager* 10.

If the defendant claim property, that it was Corn, whereof a Replevin is ſued; If the Defendant ſhew that the Plaintiff did ſurrender his land to him ſowed with Corn, he ſhall not gage deliverance: And if it be found againſt him, the Plaintiff ſhall recover all in damages, 30 E.3.9.*Gager*, &c. And yet there it was ſaid, that one who avowed for a Heriot, claiming property, was driven to gage deliverance, and that was 21 *E.*3. *Gager* 7. But ſee the contrary of the Heriot, where he avowed by execution of a *Fieri facias*: Or if he alledge the property in another, and not in the Plaintiff; or if he ſaith, that he took the Cattell in another place, *quere*, of that, &c. by *Brian*, *H.*21 *E.*4.*Gager* 19. But it is adjudged, that he ſhall gage deliverance, where he ſaith, that he took them in another place then &c. 1 *H.*7.21. And therefore if he do alledge the taking in another place, which is ancient demeſne, he ſhall gage deliverance, yet if he had ſaid, that the place where, &c. is ancient demeſne, he ſhall not gage deliverance, &c. 10 H.4.*Gager* 23. 11 H.4.2.

The plaintiff prayeth deliverance, the defendant ſaith, that he put them into the pound, and that they are dead in the Plaintiffs default, this is a good plea, by *Martin*, 4 H.6.14.*Gager* 12. And at iſſue in whoſe default they died: But it is no plea for the Plaintiff to ſay, that the defendant hath carried them unto a place unknown, if they were in any open pound within the County, 5 *H.*7.9. And by the ſame Iſſue taken, it ſhall be holden confeſſed that they are dead. And it ſhall be no Iſſue to ſay generally that they are dead, or alive; but the Plaintiff ſhall have a Writ to mak deliverance, *Si conſtare poterit*, &c. and upon return that they are dead, the Plaintiff may aver the contrary, 30 H 6.2 *Gager* 16. 3 H.6.15. *Gager* 11. 22 E.4:*Gager* 20. And there for parcell he ſhall gage deliverance, and for the reſt, that they were dead: and holden that the Writ

ſhall

ſhall be the like for the firſt, and if, &c. for the reſt, &c. the Plaintiff pra y-ed that the defendant might gage deliverance, and he ſaid that the plaintiff had his beaſts in *Withernam*, and they were at iſſue upon that, *M* 2 *E*. 2. *Gager* 29. But the contrary is holden, and that a Writ to make deliverance ſhall iſſue forth, with *ſi conſtare poterit*, that the Plaintiff hath the beaſts of the other in *Withernam*, to deliver them to the Defendant; and upon that returned, that the Plaintiff hath eſloined them, *Withernam* ſhall iſſue forth, *P*. 26 *H*. 6. *Gager* 15.

Replevin of a taking in the Tenure of *B*. The Defendant ſaith, that *B*. is neither Town nor Hamlet, he ſhall not gage deliverance, becauſe he may traverſe the taking afterwards *&c.* 4 *E*. 3. 13. *Gager* 9.

IV. *Where Gager ſhall be in Recaption*, Homine Replegiando, *where in Treſpaſſe, where in* Second Deliverance, &c.

IN a Recaption, the Defendant doth avow for cauſe, *&c.* and at iſſue; The Plaintiff prayeth that he may gage deliverance, and adjudged that he ſhall, 47 *E*. 3. 22. *Gager* 3.

In a *Homine Replegiando*, at iſſue, if Frank, *&c.* and upon a ſuggeſtion of the Plaintiff, that the Defendant had taken his Goods, a Writ iſſued forth to make deliverance of the Goods to the Plaintiff, 6 *E* 4. 8. *Gager* 17. 5 H. 7. 3. *Gager* 21.

In a *Homine Replegiando*, the Defendant after ſuch Avowry (that his Villain) did gage deliverance of the body, and a Writ awarded to deliver it, if, &c. although it may be that the Defendant is not poſſeſſed of the body, and if it be ſo, *nulla ſequatur pœna*, *P*. 12 *E*. 4. 4. *Gager* 18.

And the forme of Gager deliverance of the Goods of the Villain, is to have a Bill that ſuch and ſuch are his Goods, and a Writ for to deliver them, 5 H. 7. 3. *Gager* 21.

See that in Treſpaſſe the Defendant claimed the Plaintiff to be his Villain, the Plaintiff found ſurety to proſecute, and hanging the plea, the Defendant took all the Cattell and Goods of the Plaintif, and yet for that was not fined, *P* 9 H. 5. *Fines* 39. And note, it is a good return in a *Homine replegiando*, that the Defendant doth claim him as his Villain, ſo as he could not make deliverance, and therefore the Plaintif found ſureties by his friends to be here, and had a Writ to make deliverance, *M*. 8 H. 4. *return of the Sheriff* 47.

Treſpaſſe for taking of his Plow-Cattell, the Defendant ſaith, that he holdeth of him, and he could not find other Diſtreſſe, and upon that they were at iſſue, and the opinion of the Court was, that the Defendant ſhould gage deliverance, although it was in Treſpaſſe, 5 *E*. 3. 56. *Gager* 28.

V. *A Wri*

V. *A Writ to make Deliverance for the Plaintiff, and the ſame Writ for the Defendant, and Proces upon it.*

THe Defendant gaged in Court, and a Writ iſſued to make deliverance to the Plaintif, 7 *R.*2. *Gager* 2.

And if he do alledge delivery made before the Writ, it ſeems the Writ ſhall be then conditionall, *M.*15 *E.*3. *Gager* 3. And if the Sherif return that the beaſts are eſſoined, a *Capias* ſhall iſſue againſt the Defendant, and not *Withernam*, 22 H.6. 41. and ſee 26 H. 6. *Gager* 15. Where the Proces ſhall be with an if,&c Where the Defendant ſhall have a Writ to make deliverance of the *Withernam* taken by the plaintif, ſee 11 H.4. *Proceſſe* 121.

VI. *What perſons ſhall gage deliverance for another.*

THe Attorney ſhall gage deliverance for his Client, 6 E. 4. 8. *Attorney* 22. and 1 H.7.11 and 15 E.3.*Gager* 4.

The Kings Baylif who diſtrains for the Kings debt, ſhall gage deliverance as for another perſon, by *Fineux* and *Read*; yet *Frowike* ſaith, That the bookes are contrary, *Sec hoc negatur*, 16 H.7.*Gager* 30. 15 H.7. 11. but 27 H.6.*Gager* 27. agrees with *Frowik*, and that he may ſell the Diſtreſſe.

He who makes Conuſance as Baylif of the Husband and Wife, ſhall gage deliverance, 4 H.6.13.*Gager* 12.

VII. *Gager of another thing which was not taken at the firſt.*

THe plaintif prayeth that the Defendant may gage deliverance, who ſaid, that the plaintif is ſeiſed,&c. the plaintif ſhewed that he had deliverance in the County, but becauſe he was Non-ſuit after the Defendant had return, and becauſe the Sherif found not the beaſts, he took the price of them, and delivered the ſame to the defendant, and they were at iſſue, if he did deliver the price of the beaſts, 25 *E.*3.*Gager* 8.

And in a *Homine replegiando*, the defendant did gage deliverance of the goods of the Villain, 6 *E.*4.8. *Gager* 17.

VIII. *Paine for not Gager where he ought, and where for not delivering the Cattell.*

THe Defendant was impriſoned becauſe he would not gage deliverance where he ought to do it, 31 *E*:3.*Gager* 5. And if upon a Writ awarded, the defendant doth eſloin them, a *Capias* ſhall iſſue forth, and all ſhall be recovered in damages, 22 *H.* 6. *Gager* 14. and 1 H. 7. 11. And where the plaintif prayeth deliverance, and the defendant ſaith, that he hath his beaſts in *Withernam*, a Writ ſhall iſſue forth to make deliverance to the plaintif, and if he have beaſts in *VVithernam* to deliver them to the defendant: And if the plaintif eſloin the beaſts, a *Withernam* ſhall iſſue of his beaſts, and he ſhall be diſtrained to anſwer to the King for the contempt, and the party his damages, and that although the plaintif would not be Non-ſuit in the Replevin, 26 H. 6, *Gager* 15. *vi. F. N. B.* 72. *ac.*

IX. *VVhere Gager ſhall not be untill Avowry or Replication to the Avowry made.*

IN Avowry for a Rent-charge, the defendant ſhall not gage deliverance untill the plaintif hath anſwered to the Avowry, for which cauſe he prayed in aide, which was granted, and then the defendant did gage deliverance, 22 H:6.41 *Gager* 14. And before Avowry a man ſhall not gage deliverance, for he may claim property before iſſue, or demurrer, by *Wilby*: And Gager of deliverance is to find ſureties to make deliverance, *Hil.*25 *E* 3. *Gager* 25.

The defendant ſaith, that he took the Cattell at another place damage-feaſant: Now the plaintif ought to maintain his Writ, before that the defendant do gage deliverance; but he gaged there before iſſue joyned, or demurrer, 1 H.7.11. and 21.

WASTE.

I. *Where it lieth againſt Guardian in Socage, during the Nonage of the Heir, where after.*

NOte, the Heir within age did recover againſt his Mother in Waſt, Guardian in Socage, *Et quoad damna remanebit*, 2 *E.*2. *Waſt* 1. 14 *E.*3. *Waſt* 107.

And ſee 16 *E.*3. *Waſt* 100. where the Mother did alledge, that ſhe was Tenant in dower of the third part &c. and it was found, that ſhe held as Guardian by Nurture, the day of the Writ brought, and that hanging the Writ, a ſtranger did aſſign dower unto her, and the opinion of the Court was, that the Writ ſhould not abate by that mean aſſignment, but the opinion of the Juſtices there was, that Waſte doth not lie againſt Guardian in Socage, but Treſpaſſe upon the Caſe, or accompt at full age of the Heir, but *Kells* ſaith, that accompt doth not lieof houſes pulled down.

Guardian in Socage ſhall not be puniſhed, if not for voluntary Waſt, for if he ſuffer a houſe to fall, he ſhall not account for it, by *Priſeit*, 28 H.6. *Waſt* 9. *Quere*, if Waſt or accompt lieth.

Guardian in Socage ſhall not anſwer for Waſt done by a ſtranger, by *Fitzherbert N.B.* 59. *Quare*, if *Magna Charta, cap.*5 extend to Guardian in Socage: See *Fitz. N.B.* 59. That the Heir within age ſhall have Waſt againſt Guardian in Socage.

II. *Waſt by banishment of the people, and Bar in it.*

WAſt againſt Tenant in dower of the Exile of the people &c. and the Plaintiff recovered accordingly, yet the Writ is given by the Statute, and there is no mention made of baniſhment or exilement *&c.* 3 E.2. *Waſt* 2. and therewith agrees 11 E.2. *Waſt* 113. and there it ſaid,

that it is by the Statute *de Conſimili caſu*, but *Fitz. N. B.* 56. H. It ſeems to be, that it is given by the Statute of *Marlebridge*, *cap.* 23. ſee 7 *E.* 3. 34.

The vexing of the Tenants is not waſt, if they do not depart, and leave their Tenements, 17 *E.* 2. *Waſt* 118. 2 *H.* 6. 11. *F. N. B.* 55. 6. agrees of Villains.

And the impoveriſhing of the Villains by Taxes and Tallage, is Waſt, 15 *H.* 3. *Waſt* 131. and 16 *H.* 3. Waſt 136. and 16 *H.* 7.

And where ſuch Waſt is aſſigned, no Waſt is a good iſſue *&c.* 15 *H.* 3. *Waſt* 131.

III. *Waſt againſt the Committee of the King, during Nonage, where after, and the Bar in it.*

29 *H.* Dyer 25. *acc.* *C.* 2. *part inſtit.* 13 *a. F. N. B.* 59 *acc.*

DUring the Nonage, the King ſhall take advantage againſt the Committee who doth Waſt, according to *Magna Charta*, but if the heir be of full age, he himſelf ſhall have the Action, *&c.* 3 *E.* 2. *Waſt* 3. and this is to be underſtood where the King doth not take amends before, for which the Defendant ſaid, that after the Leaſe of the King he did no Waſt *&c.* 7 *E.* 3. 12. 43 *E.* 3. 31. *F. N. B.* 59 *E.*

It was preſented for the King, that the Committee *&c.* had done Waſt by cutting down Trees, but if they fell down by Wind, it ſhall be a good Bar, if they were carried away by a ſtranger, for the Heir ſhall have Treſpaſſe againſt the ſtranger, alſo if the Guardian hath burnt the Trees, it is no Waſt, alſo if he pull down a new houſe, which never was covered, it is not Waſt, by *Knivet*, 40 *Aſſ.* 22. *Waſt* 24. See that upon ſuch Preſentment a Writ was awarded to inquire of the Waſt, 20 *H.* 3. *Waſt* 138. to certifie in the Chancery, *F. N. B.* 596. and it ſeems upon ſuch a Writ, the King ſhall have a *Scire facias &c.* 15 *H.* 7. 6.

IV. *Waſt againſt Tenant in Dower, or againſt Tenant by the Courteſie, and the Bar in it.*

THE Reverſion of Tenant in Dower was granted unto the Husband and wife, and the heirs of the Husband, they brought Waſt, ſuppoſing the diſinheriſin of them, and the Writ good, *H.* 3. *E.* 2. *Waſt* 4. The action lieth againſt him for Waſt done by the Leſſee of his eſtate, 11 *H.* 4.

Tenant in Dower leaſeth her eſtate unto the heir, and *T.* the heir being within age, and doth not take the profits, and at his full age diſagrees, and brings Waſt againſt Tenant in Dower for waſt done by *T*: and good, but if the heir alſo had taken the profits, it had been a good Bar, that before

fore &c. no VVaſte &c. 30 *E.* 16. *Waſte* 26.

VVaſt by the heir againſt Tenant by the Courteſie, becauſe he ſuffered the water of the Sea to drown the Land, for not repairing the Sewer, 20 H.6.1.

Three Coparceners aſſign Dower to their Mother, who commits waſt, the one dieth, the 2 brought waſt, and well, but they ſhall not recover the whole in damages, 11 *E.*3.*Waſt* 115.

Note, that Tenant in Dower, after ſhe hath loſt a VVood in VVaſt, yet ſhe ſhall have houſe-boot &c. at the View of the Plaintiff in the ſame wood, ſee, this was before the Statute, 4 H.3.*Waſt* 129.

Tenant in Dower ſhall not be puniſhed for waſt done by her ſecond husband, who is now dead, 15 H 3. *waſt* 133. alſo it is a good Bar, that the ſecond husband did it by the commandement of the King, 7 H.3. *Waſt* 141.

V. *Generall Bar in an Action of Waſt, and what ſhall be a good Bar, what not.*

WAſt againſt the Committee for the heir at his full age, it is a good Bar to ſay, that the King hath had amends for the VVaſt, 3 *E* 2 *Waſt* 3.

So that the houſe in which &c. ſtood upon Poſts, without more building, or that it was never covered, for then it is no houſe, 40 *Aſſ.*22.

VVaſt againſt Tenant in Dower, it is no Plea for her to ſay, that in a *Præcipe* depending againſt her, ſhe vouched the Plaintiff, who hath entred into the warranty, and is now tenant by the warranty, 3.*E.* 2.*Waſt* 4.

The Grant of an Abbot, that if waſt be done, it ſhall be determined by Neighbours, is no Bar in waſt, brought by the Anceſtor, 3 *E.* 2. *Waſt* 5.

A Surrender to the Plaintiff with his acceptance, is noBar in waſt, if he do not ſay, for her, before which was no waſt, 8 H.5.8.14 H. 6.14, *acc.* by *June*, and 27 H. 6. *Waſt* 8. contrary adjudged, 12 *R.*2.*Waſt* 99. and therewith agrees *Newton*, 19 H.6.66.and *P.*3.*H.*6.*Waſt* 35. It is holden a good plea, the Surrender with agreement, and the iſſue entred accordingly.

If Tenant for life do waſt, and alieneth in Fee, and the Leſſor entreth, yet he ſhall have a good action of waſte, 45 *E.*3.9. the ſame Law where he enters for a condition broken after the waſt done, 45 *E.*3:9. 12 H.8. 6. but if he enter without cauſe upon his Leſſee for life, he ſhall not have waſt, 12 H 4.6.5 H.5.12. 8 H.6.11.

It is a good plea for the Aſſignee of the Leſſee, that after the Leaſe no waſt was done, *Fitz.N.B.*56.*a*. and for Guardian of Right, 44 *E.* 3. 27. So for the Committee of the King, 7 *E.*3. 12.*Waſt* 15. but for Guardian

dian in fact it is no plea, 27 *E.*3. 5. *Waſt* 14. 26 *E.* 3. *Waſt* 10.

Waſt againſt the Leſſor of his Father, where the Leaſe was, that it ſhould be lawfull for him to make his profit *meliori modo quo videat ſibi expedire*, without contradiction of him or his heirs, yet it is holden that he cannot do Waſt; for it ſhall be intended *melior legali modo &c.* 4 *E.* 2 *Waſt* 11. *vide* 46 *E.*3.17. But ſee 17 E:3:7: *Waſt* 101. that a Leaſe of Land to make his profit, he may dig in a Mine, if there be a Mine and no other profit, and may ſell the Ore, and ſo of a wood by *Wilby* and *Schard.*

Entry into parcell of the Land, wherein he hath aſſigned waſt goes but in Bar of that onely, 7 E:3 43: 8 E: 3:52: *Waſt* 16:46 E:3: *Waſt* 90.

It is a good plea, that the Plaintiff himſelf was ſeiſed, the day of the Writ purchaſed, and the iſſue was, that he never after &c: 11 E:2: *Waſt* 114: 4 E:3:33.

A woman joint Leſſee with her husband ſhall not be puniſhed for waſt done in his life time after his death, 9 E: 3:42: and 10 E:3:17: and the difference is when their Seiſin was lawfull; for if it were by Diſſeiſin, ſhe ſhall be charged &c:2 H:43:42 E:3:22:15 E:4:28:3 E:3.46: but living the husband, the action of waſt will lie againſt them both, 17 E:3:4:7: and *Quare*, if in this Caſe, the husband dieth after Judgment, if Execution ſhall be ſued againſt the wife, *Fitzh.* abridgeth the ſaying of *Hill*, that ſhe ſhall be charged, but if a woman hath a Term or other Leaſe *&c:* before the coverture, ſhe ſhall be charged with the waſt of the husband &c: 9 H:6:52 E:1. *Waſt* 128.

Vide 2 H.4. 3. *Vide Old Fitz. N.B.*36. *acc.*

It was found before the Sheriff, that one defendant did waſt, the other not, and the Plaintiff could not have Judgment, but *Sicut alias* awarded, 6 E:3:54. for it ought to be found the waſt of them both, for the miſchief, that if one hath nothing &c: yet 3 E:3:18: and 33 E: 3: *Waſt* 6: Judgment was given preſently upon ſuch a Verdict, *vide* 14 E:3: *Return of the Sheriff* 111.

The Leſſee of a Mill could not fell and cut timber for to amend the Mill, 4 E:3: *waſt* 22: alſo if he cannot cut trees to cover the houſe, but he may cut trees to repair a houſe, or to make Carts, *P:*12 E:3: *Waſt* 28 19 E:3: *Waſt* 30: But if the houſe be burnt by ſtrangers, and not by the Kings enemies, he ſhall not cut down trees to repair or build it again: Alſo the Leſſee cannot cut down apple-trees to repair the houſe, if there be ſufficient of other Trees, *temp.* E:1: *waſt* 122: and it ſeems that the Leſſee may cut Trees to make Troughs for his cattell to drink in, 33 *Aſſ. Double Plea* 9: and the cutting down of dead wood is not waſt, but he ſhall not cut it to repair a houſe which is burnt by his ſervant or a ſtranger who is not the Kings enemy, 41 E:3: *waſt* 82: *temp* E:1: *Waſt* 123. and note, that the burning is the waſt, and not the cutting of the trees, to repair it, by *Wilby*, 19 E:3: *Waſt* 30. and ſo is 20 E:3: *Waſt* 32:

40 *Aſſ.*42. *acc.*

7 *H.*6. 38. *acc.*

If a houſe be burned in the default of the Leſſee, and he cuts down Trees to build a new houſe, *Quare* if the one or the other be waſt: it hath been holden that the cutting of the trees is waſt, but ſee 44 E:3: 44: it is waſt in both:

VVaſt of apple-trees, The defendant ſaid, that they fell by the wind, and became dry, for which he took them for fewell, and holden a good Plea, 7 H:6:38: alſo it is a good Bar, that it is ſeaſonable wood &c.7 H: 6.38.

VVaſt found according to the writ, and that hanging the writ, the defendant had repaired it ſo well as it was before, yet the Plaintiff did recover, and that point of the Verdict as to the Reparation was void, 38 *Aſſ.* 2. *VVaſt* 23.9 H.6.66. 13 H.7. and 15 H.7. *acc.* but a new houſe made as good &c. before the action brought, is a good Bar, 20 E.4.18.21 E.4.39.13 H. 7.20 and 21.

The Guardian ſhall not have windfalls, 40 *Aſſ.*22: but Leſſee for life ſhall have them, 7 H.6.40: ſo of a houſe fallen, 42 E.3:6. and 44 E: 3: 6, and 44: 29 E:3:42: but if the houſe be diſcovered by tempeſt, this is waſt, if it be not covered again within convenient time, 12 H.4:6.

If the Leſſee doth repair a houſe which was ſo ruinous, that he was not bound to repair it, it is not materiall of what length or breadth he maketh it, but where he repaireth a houſe which is taken down by himſelf &c. ſo as he is bound to repair it, there it may well come in iſſue, if it be ſo much in length and ſo much in breadth; for if it be not, it is waſt, 22 H.6.18. 42 E:3:27: and it ſhall be ſo, although he pull down the firſt with the Plaintiffs conſent, and makes a new houſe as good, and as profitable, by *Newton* 22 H:6.18:

If the Leſſee pulleth down a ruinous houſe, he ought to build a new houſe of the ſame length and breadth, ſo was it adjudged, 8 *Jacobi*, in *Smiths* Caſe, but ſee 22 H.6. by *Newton*, if the houſe fall by tempeſt or otherwiſe, and not the default of the Leſſee, it is otherwiſe.

Ruinous at the time of the Leaſe, is a good Bar, 7 H.6.40. 14 H.4. *acc*: but if he will rebuild it, he may well cut down trees to do it, and that although it fell in the time of the anceſtor of the Plaintiff, if it be a neceſſary houſe, and neceſſarineſſe of it ſhall come in Iſſue, 11 *H.*4. 31. if it becometh ruinous after the Leaſe, it is waſt, although the houſe do not fall, 34 *E.*3. *waſt* 145.

It is a good Bar for Leſſee for life, that a ſtranger had the Land in execution upon a Statute Merchant of the Plaintiff, before which there was no Waſt, 19 *E.*3. *VVaſt* 31.

Note, that cutting down of Apple-trees which fall by wind, if yet they will bear fruit, is waſt, 44 *E.*3.44. *Vide* 7 H.6. 3. 9. *before, not if they fall by wind and become dry.*

Waſt, declaring that *J.* did enfeoff the Tenant, and *A.* his wife, mother of the Plaintiff for their lives, and to the Heirs of *A.* who is dead, the Tenant ſaid, that he in the life of *A.* did alien to a ſtranger in Fee. *A.* died, and he took back for life: So the Plaintiff hath nothing in Reverſion, and holden a good plea; for all is purſuant to the generall Iſſue, that he hath nothing in the Reverſion, 8 H.6.13. *Martin* ſaith there, that nothing in the Reverſion generally is no plea, where the Plaintiff declares of a Leaſe made by himſelf or by his anceſtor, otherwiſe it is where he

he brings the Action as Aſſignee &c. 8 H.6.15. See contrary to this (s) of the generall plea, 46 *E.*3.10. but 30 H.6.9 *b.* agrees with 9 H:6. 15.

A Leaſe *Abſque impeticione vaſti, Proviſo*, that he ſhall not do waſt *in domibus voluntariè*, now he ſhall be puniſhed for no Waſt, but in the houſes, and there onely when it is voluntary, but if he hath done voluntary waſt in the houſe, he ſhall be puniſhed for all the reſt &c. *vide* 9 H.6. 35.*b.*

It is holden a good Bar to avoid circuit of action in waſt, that the Plaintiff did grant unto him that he ſhould not be puniſhed for waſt, 6 E.3.7. 20 H.7.4. by *Tremaile.* But *Fineux* chief Juſtice contrary there, and 21 H.7.24. if it be by another deed, and with that agrees 9 H. 6. 35. and 21 H.6.47.

It is a good Plea for the Tenant by the courteſie, that the Mother hath an elder ſon who is living, which did ſurvive, or a ſon, whereas the Plaintiff is a daughter. *Quere* if it be good, that ſhe hath another daughter, which is alive, who hath iſſue, 9 H 6.11. *F.N.B.*60.

The Tenant ſaith, that he cut trees to re-build the houſe, which was ruinous in the time of the Anceſtor of the Plaintiff, which fell afterwards, and Iſſue was taken, if it were ſufficient &c. in the Plaintiffs time, for then if it falleth through his default &c. it is not lawfull for him to cut timber to build it again, 11 H.4.31.

In waſt by the Lord, by eſcheat of a houſe, it is a good plea that it was uncovered in the time of the Tenant, and feeble, and that afterwards for weakneſſe it fell down &c. the Plaintiff replyed that the Tenant took it down and ſold it, the Tenant ſhall averre his ſaying, without that, that he took it down or ſold it, 45 *E.*3.3. for it is not lawfull to take down a houſe which is ruinous, 14 H. 4. 12.

Waſt maintaned for ſuffering his Cloſe to lie uncloſed, ſo as the Cattell of others did eat his young ſprouts of the trees: So of putting in beaſts, or young Bullocks, not of any value, 20 E.3. *Waſt* 2.

So of Quick thorn; for this is deſtruction, although it be not properly Waſt: See 9 H.6.43.46 E 3.17.

Vide 11 *Jac. in Co.* 1 *B.* in Sir *John Gages* Caſe, eradicating of white thorn is waſt, but not of black thorn, 46 E. 3.9 H. 6. *acc.* but by *Cook* Chief Juſtice, cutting of Quick ſet-hedges is no waſt, but is good husbandry, and they will grow again, but eradicating of them is waſt, and ſo it is of a hedge of black thorn.

It is no bar, that it is ſeaſonable wood &c. if it be above 20 years growth, 7 H:6:40: 10 H:6: VVaſt 42: See of this matter, what ſhall be ſaid waſt. 40 E.3.33: *waſt* 67.

The Patron of a Colledge encorporate made Collation to *J. S*: by theſe words, or *Dedi* &c: *tali Collegio* &c: for term of his life, and now in waſt brought againſt him, the Tenant could not have the ſpeciall Plea upon the matter, becauſe it is not a Leaſe; for a Patron by no means can make a Leaſe of a thing not in him to that intent, for which he ſaid,

that

That he did not leaſe, *&c.* and good, 21 H:6.2. yet I may have the ſpeciall plea, whereby my Diſſeiſor maketh a Leaſe to me for life, that is granted, becauſe he hath a Freehold, but yet I am remitted.

If the Leſſor grants Trees during the term, and he himſelf cut them down, or commands the Leſſee ſo to do, the ſame is not waſte, but if the Leſſor cut them for the Grantee without the commandment of the Leſſor, this is waſte, 21 H:6.47. And the commandment was averred. See if it ought to be by Deed, as a commandment for to dig gravell, 2 H 7. 14. And if the Grant was before the Leaſe, the commandment of the Grantee ſhould be good: Alſo if he cutteth them down without commandment, yet he may plead the Title of the Grantee againſt the Leſſee, 11 *H*:4.31.

The Leſſee may well cut down Oakes and Aſh for fire-boot, &c. if there be not under-wood, &c. otherwiſe it ſeems for ſale-boot, 21 *H*.6.49. 20 *H*:3.*waſte* 139.

Waſte lieth for him in the Remainder in tail againſt Tenant for life, who hath the Fee in remainder, 41 *E*:3.23.42 *E*.3.19. But he in the remainder in tail after poſſibility of iſſue extinct, ſhall not have waſte: And if he hath iſſue wich dieth, hanging the Writ, it ſhall abate the Writ, 2 H. 4.21. 33 H.4.6.*F. N. B*.60.

C.5.part.ac 50. E.3.ac.vi,c.11. part 83 Bowls caſe. 11 H.4.14 34 H.6.16.2. 39 E.3 16.ac.

That he hath nothing, the day of the Writ brought, is no plea for the Defendant in waſte, becauſe the Alienation after the Waſte done ſhall not excuſe him, 40 *E*.3.33.41 *E*.3.23.

That the houſe was weak at the time of the Leaſe, and fell afterwards, is a good bar, 45 *E*:3.2.14 H.4.12.

Many things of ſmall value, as one twelve pence, another ſix pence, &c. make waſte, but not one of them by it ſelf, 14 H.4.12.9 H.6.66. Waſte of the value of twenty pence adjudged, was againſt a Guardian, 34 *E*. 3. *waſte* 146. and 20 *E*.3.*waſte* 32.12 *H*.4.4.

38 E.3.7. *a Grange to the value of* 40 *s. waſted, and yet no waſte they ſay.*

Waſte of a houſe, no ſuch houſe at the time, is no plea, 42 *E*.3.22: 17 *E*.3.7. For if the Leſſee himſelf, or a ſtranger with his aſſent build it after the Leaſe, the Leſſee ought to maintain it, 42 *H*:4.6. 17 *E*.2. *Waſte* 118.

But otherwiſe it is where the Leſſor makes a new houſe after the Leaſe, without the aſſent of the Leſſee, 49 *E*.3.1.

Waſte doth not lye of that which the Leſſee covenants to leave in as good plight, &c. if the houſe falleth afterwards by tempeſts, 43 *E*.3.6. *VVaſt* 74. So if it were ruinous at the time, &c. 49 *E*. 3.1. 8 *E*.4.2. but in both caſes the Leſſor ſhall not have Covenant.

Releaſe of the Anceſtor with Warranty to Tenant for life, ſo as he nor his Heirs ſhall not claim nor demand any right during his life, is no bar in Waſte done in the time of the Heir, nor a releaſe of the Heir himſelf in the life of the Anceſtor, but an expreſſe Grant of the Heir in the life of the Anceſtor to the Leſſee, that he ſhall not be impeached of Waſte, ſhall be a good bar againſt him, *&c.* 42 *E*:3.24.*VVaſte* 72. 19 *H*:6.17.

A man reciting that where his Father leaſed to *J.* for life, Know, *&c.*

me dediſſe, the ſame lands to the ſaid *J.* for life, &c. *& relaxaſſe omnimod: actiones vaſti quas habeo, ſeu, &c.* and the opinion it ſeems (by the iſſue which was taken, that nothing paſſed by the Deed in Waſte.) That if the ſame doth enure onely as a Releaſe, as if he were Tenant for life at the time, by the Leaſe of the Father, that the ſame ſhall not be a bar for Waſte done after that Deed. Otherwiſe it is if the land paſſe, for then it is as a Leaſe without impeachment of waſte, 31 *E*:3. *waſte* 103. ſee 3 *E*:3. 44.

See 2 H:4.24. That nothing paſſed by the Deed, is no plea in waſte by him in the Remainder, but it is a good plea, that he did not leaſe by the Deed, &c.

Tenant in tail ſhall be barred of waſte for his life by releaſe of his right to the Tenant of the land, 13 H:7.10.38 *E*:3.27.

Warranty to the Leſſee and his Heirs, holden no bar in waſte, 6 *E*:3.7. 20 H:7.2. it is agreed a good bar, *vi.* 20 H:6.21.

Releaſe of Actions perſonals, after the waſte done by a Prior, Leſſor, ſhall not bar his Succeſſors of an Action of waſte, becauſe the houſe hath an Inheritance in it preſently, otherwiſe it is if he had taken amends, 42 *E*: 3.22. 10H. 7.3. but it ſeems to be a good bar as to damages, 13 H. 7.10.

If a Prior licence the Leſſee to cut Trees, the ſame ſhall diſcharge him in waſte brought by the Succeſſor, 44 *E*: 3. but if he cutteth down the Trees, and then the Prior doth releaſe to him, the ſame ſhall not bar his Succeſſors, 21 H 6. *ac.*

If an Abbot Predeceſſor makes a Leaſe, and covenants that the Leſſee ſhall take Timber, *&c.* in another wood which is not leaſed, the Leſſee ſhall not take it without delivery, but by ſuch Covenant the Leſſee ſhal not be diſcharged of waſte, although the Abbot will not deliver the Timber, if there be ſufficient upon the land, otherwiſe it is if he hath not ſufficient &c. 44 *E*:3.21. ſee 3 *E*:2. *Waſte* 5,

Waſt of Trees, it is no plea that the plaintiff took them, 44 *E*:3.44. And if the Defendant ſaith, that a houſe fell by wind, it is a good Replication that it was for want of Coverture, 44 *E*:3:44.

If the Leſſee cutteth for Houſeboot, &c. or to make a Bridge in the land, as he well may: If now others who have Common of Eſtovers there, or Eſtovers certain, cut down the ſmall Trees, or Bruſh, which the Leſſee hath cut before, ſo as they grow again, the Leſſee ſhall be puniſhed in waſte.

Waſte brought of a Meadow drowned, by reaſon that the banks of the River were broken down, and not repaired, ſo as it could not be mowed; The Defendant ſaid, that the Plaintiff had a Mill, &c. of which the banks were not repaired of the Pool belonging to it, &c. and they were at iſſue, if for want of repairing the ſame, the land where, *&c.* was drowned, 46 *E*.3. *waſte* 91. 20 H:6.1.

Waſte, for that he had made waſte in a Pool which he held as Guardian,

he ſaid, that he let out the water by a pipe becauſe he could not otherwiſe fiſh in the Pool for Reeds, and left ſufficient ſtore, at the full age of the plaintiff, iſſue was taken upon it, and the View there, and it was holden, that although he ſell fiſh, and ſtore his own pound &c. it is not waſte, if he leave ſufficient at the full age of the Infant, and that ſhall be tried by Neighbours: The like Law is of Deer in a Park, if he ſtore his own parks with the Deer, yet if he leave ſufficient Deer to ſhew at his full age, it is not waſte, 5 *R.*2. *Waſte* 97.

Leſſee of a Wood, Mine, or Piſcary, may ſell, &c. 17 *E.* 3. 7. 12 *E.* 4. 8.

Waſte againſt Guardian, he pleaded an Agreement betwixt the Plaintiff and her Coparcener that the Plaintiff ſhould give the other for equality of partition, certain Trees, &c. and that he as Guardian, cut them down and delivered them, &c. And iſſue was taken that the Agreement was of a ſumm of money, and not as above: Alſo that he had cut down more, &c. (*s*) of greater value then the agreement was, and alſo in another place not appointed, &c. 11 *R.*2. *waſte* 98.

Waſte of three and twenty Oakes, the Defendant ſaid, that he did repaire the houſes with them, the Plaintiff ſaid, that he did that with foure of them, and that he ſold the others: And although by this Replication the Writ was confeſſed falſe in part, yet the Defendant ſaid, that he did repaire the houſes with them all, 32 *E.* 3. *Waſte* 104. 22 *H.* 6. 24.

Note, 37 *Eliz.* in *Com. B.* If Leſſee for life or years, fell and cut Timber Trees, it is waſte, *Non quia vendebat, ſed quia ſcindebat*; But if he ſuffer them to lye upon the ground without doing any thing with them, it is waſte; and if he fell them with an intent to repair, if he after ſell them, it is waſte, *Non propter venditionem*, but becauſe he felled them.

Waſte of a Cottage, the Defendant ſaid, that it was the Cottage of a Villain, and ſtood empty by reaſon of his death in it in the time of the Plague, and that no body would dwell in it: And the iſſue was, that he might have Tenants enough, &c. 32 *E.* 3. *waſte* 104.

Waſte againſt husband and wife and that was found by their default before the Sheriff, and the wife was received in the Common Pleas, and pleaded, no waſte done, 19 *E.* 3. *waſte* 125.

The Guardian in Waſte ſaid, that he aſſigned Dower to the Mother of the Plaintiff, and becauſe there was not a houſe upon the land, he cut down Trees and built two houſes, and becauſe he built them upon the Soil of another, it was adjudged, that he ſhould build two more houſes upon the Plaintiffs lands, to the value, &c. and find ſureties that he ſhould not do waſte, 9 A. 3. *waſte* 137.

VI. *Waſte againſt an Abbot, Prior, where for them, where for a Maſter of a Colledge, Parſon, Biſhop, and the Bar.*

IT is no plea in Waſte by a Prior that his Predeceſſor granted that it ſhould be determined by Neighbours, 5 *E*:2.*waſte* 5. But the Grant of the Predeceſſor under the Covent Seal that he ſhall be diſcharged of the Waſte, will ſerve againſt the Succeſſor, 21 H.6.46. So amends, or other agreement with the Succeſſor, is a good bar, 42 *E*.2.22.

F.N.B.59.E. and 57.E, 10 H.7.5.

A Biſhop, Parſon, Maſter of a Colledge, Arch-deacon, ſhall not puniſh Waſte done in the time of the Predeceſſor: Otherwiſe it is of an Abbot, Prior, &c. who alſo ſhall have an Aſſiſe of a Diſſeiſin to the Predeceſſor, 2 H:4 3. the reaſon is, becauſe the Abbot cannot make a Will, but the right doth continue in the houſe, notwithſtanding his death.

Waſte againſt an Abbot Guardian, who ſaid, that the Ward fell in the life time of his Predeceſſor, after whoſe death no waſte was done, 43 E.3. 8. and 30. 7 E. 3. 53. 49 E 3. 25. But if an Abbot Guardian be depoſed, his Succeſſor ſhall be charged for waſte done in the time of the Predeceſſor. And if an Abbot command a Monk to do waſte, the Abbot himſelf ſhall be charged after the death of the Monk, but not his Succeſſor, 49 E 3.26.*Waſte* 95.

VII. *Waſte by him who hath but for life, or years, with another who hath the Fee.*

WAſte againſt Tenant in Dower by the husband and wife, upon a Grant to them and to the Heirs of the husband, ſuppoſing waſte to be done to their diſinheriſin, is good, 3 E:2.*waſte* 4.17 E. 3 7. But *Newton* ſaith, 22 *G*.H.25. That the Writ ſhall ſay, *ad exheredationem* of one of them, and therewith agrees, 18 E.2.*Brief* 835. 2 H.5.7.

Vi: F.N.B.59. T.vi 29 Eliz. in Com.B. Sir *Roger Lewkner* and *Fords* caſe, Waſt was brought by two Co-parceners, and the heire of the third Coparcener, her husband being alive, and Tenant by the Curteſie, and the Writ was *Quod tenuerunt*, and good, notwithſtanding the Tenant by the Curteſie was not named in the Writ, becauſe as the caſe there was, the Term was ended.

If two Parceners make a Leaſe for life, one taketh husband, hath iſſue, and dieth, the husband ſhall joyn in waſte. So if one hath a husband at the time, and dieth, the husband ought alſo be named where he hath iſſue: But if the husband alone leaſe during the Coverture, he and the iſſue ſhall not joyn in waſte. See from hence, that the husband of one Parcener ſhall be Tenant by the Curteſie of the Moyety of a Reverſion.

He

He in the Reverſion, and Leſſee for life, joyning in a Leaſe for life, they ſhall alſo joyn in Waſte, 27 H:8 13. So two Joynt-tenants, and to the heirs of one of them: But Tenant for life, and he in the Remainder joyning in a Leaſe, they ſhall not joyn in waſte, *vi.* 13 *H:* 7. 15. *vi.* 22 H 6. 25. *ac. vi.* 11 *H:* 4. 1. *pl.* 1. *ac. br. Leaſes* 2. *ac.* And by *Fitz.* the Tenant for life ſhall recover the Freehold, and he in the Reverſion damages.

VIII. *Waſte againſt Guardian in Fait, and Guardian in Right, and Bar in it.*

WAſte againſt a Prioreſs as Guardian, ſhe ſaid, that after the death of the Anceſtor, a ſtranger did abate, againſt whom ſhe recovered, after which no waſte, *&c.* and a good plea, 44 *E.* 3. 27: *waſte* 80.

The Guardian ſhall not be puniſhed for waſte done by a ſtranger, *F.N.B.* 60.

If the heir recover in waſte againſt the Guardian within age, he ſhall not recover the damages, which he ſhall do if he recover againſt him at full age, becauſe it is then out of the Statute, which ſpeaks that he ſhall loſe the Ward, and damages for not ſufficiency. Alſo the Statute ſhall not be recited againſt him, becauſe the Action is at the Common Law: Alſo no reſpect to the value, *&c.* 12 H:4. 4. *F.N.B.* 60. *T.*

In Waſte againſt Guardian, the plaintiff need not count whether he be Guardian in Fait, or in Right, 5 *R.* 2. *Waſte* 97. So he need not alledge in what land, nor the certainty of the Acres but the Inqueſt ſhall find the certainty: And if the Defendant alledgeth that ſhe holdeth the third part in Dower, the day of Writ brought, that being found, the Writ ſhall abate: And if it be found contrary, then the Jury ought further to enquire, and it is not materiall if it be found that ſhe was endowed of the land by a ſtranger, as Guardian pendant the Writ. *vi.* 16 *E.* 3. *Waſte* 100.

Waſte by the heir during his Nonage, the Sheriff returns the waſte found, and becauſe he did not return the certainty of the value of the land & of the age of the Infant, where the Statute, is that he ſhall loſe damages: It was holden, that a new Writ ſhall iſſue to enquire of the value, and another to the Sheriff where he was born, to enquire of his age; but Judgment ſhall be given preſently, that he ſhall loſe the Wardſhip, 16 *E:* 2. *Waſte* 117. *vi.* 16 *E:* 3. *Waſte* 100. But if the Sheriff take the Inqueſt by parcell, where the Waſte is aſſigned in two Towns, a new Writ ſhall iſſue forth to enquire of the whole, if the Jury have not had the view of the whole, 12 H. 4. 3.

Attachment againſt a Guardian who ſuffereth a houſe to fall, where he hath ſufficient to uphold it, 9 H. 3. *waſte* 136. But Guardian in Socage ſhall not be charged of ſuch *waſte*, 28 H:6 9.

It

It is a good Bar that he cut Trees to build a houſe for the Tenant in Dower, but then he ſhall be enjoyned upon a pain that he build another houſe upon other land of the heir, 9 H:3. *waſte* 137.

The Guardian may re-edifie houſes which he finds fallen down in his time, and may allow Aſh and Oakes for fire-boot, wherere he could not take other, yet the Verdict was generall, that he cut down Trees, 20 H:3. *waſte* 139.

The Guardian ſaid, that the Plaintiff was borne before the marriage, and becauſe he would baſtardize the Infant to his diſinheriſin, he loſt the Wardſhip: And it was awarded that he ſhould pay ſo much to the re-building of the houſes, 10 H: . *Waſte* 142.

The Guardian commits Waſte, and then grants over his Eſtate, the Writ ſhall be againſt him *quas tenet*, *t. E.* 1. *Waſte* 126.

It is no plea for the Guardian in Fait, that after the Leaſe to him, no Waſte was done, 26 *E*:3. *waſte* 10. and therewith agrees, 27 *E.* 3. 5.

IX. *Waſte againſt Tenant for life, and the Bar in it, where there is a mean Eſtate for years, or life.*

WAſte will well lye againſt Leſſee for life, notwithſtanding a mean Remainder or Reverſion for years, 46 *E*:3. 17. 4 *E*:3. 18. So for him in the Reverſion, notwithſtanding a mean Remainder for life, 50 : 3. 3. *F.N.B.* 59 H. But not for him in the Remainder, nor where the Reverſion is granted for life, 33 *E*:3. *waſte* 144 10 *E*:4. 9.

A woman Leſſee for life, took a husband, the Leſſor did confirm to them for their lives, now waſte doth not lye during their joynt lives, by the reaſon, 6 *E*:3. 19. as it is abridged by *Pigot*, becauſe the iſſue ſhall be, if he did leaſe. But ſee the book, that by the opinion of *Herle* and *Chauntrell*, the writ doth well lye for the heir of him who doth confirm, and he ſhall ſay that he leaſed, and maintain it by ſhewing the ſpeciall matter. But it is cleer, that the Action of waſte is not loſt by the confirmation, 8 *E*:3. 26. 9 *E*:3. 9. But there it ſeems if he be not in by the Confirmation, it is not as a Leaſe, &c. yet *Chauntrell* ſaid 6 *E*:3. 19. That if the Diſſeiſee confirm to the Diſſeiſor for life, he ſhall have waſte and *Fitz.* notes that to be law. But *Litt.* holdeth *fol.* 36. that the Diſſeiſor hath now a lawfull Fee.

And ſee 17 *E.* 3. 68. VVhere a woman Leſſee for life, took a husband, and the Leſſor did confirm their Eſtates for the life of the wife, and afterwards brought waſte, ſuppoſing them Tenants for the life of the wife, of the Leaſe to the wife before the Coverture, and good. So a Confirmation which doth not enlarge the whole Eſtate, ſhall not alter any thing.

VVaſt is diſpuniſhable, where there is a mean Remainder for life, becauſe otherwiſe it ſhould be defeated, 11 *E*:3. *Receipt* 118.

Vi. 40 *E.* 3. 3. 33 *E.* 3. *waſte* 144. 166.

If

If Leſſee for years grant over parcell of his Eſtate, yet the Action of waſte lyeth againſt him alone, 2 E.4.11.

Waſte of Tenant for life diſpuniſhable, for the Eſtate mean of him who hath ſued execution of a Statute Merchant, with averment, that before that no waſte was done, 19 *E.*3. *Waſte* 31.

X. *The manner of Inquiry of Waſte, and how it ſhall be done upon it, and how the Record ſhall come in.*

WAſte found before the Sheriff, and the Verdict ſealed with the ſeal of the Office, was delivered in Bank by the Plaintiff, and well, being delivered to him, *&c.* And he had Judgment of the parcell found, where he had aſſigned waſte in parcell whereof there was no Inquiry, *vi.* 22 *E*:3.1.

But ſee 14 E:3. *Waſte* 27. agreed, he ſhall not have Judgment of the parcell found, where the reſt is not enquired of, but *Poſtea* entred, and *ſicut alias* awarded, and the Sheriff ſhall be amerced, as the Plaintiff ſhould be if he had enquired of the whole, and of parcel no waſt found, &c. for the King ſhall not loſe the amercement: and ſee 12 H.4.4. That if a Sheriff do not his Office in part, as not to enquire of part, *&c.* the whole ſhall be enquired of again, by *Thirning.*

All is void in waſte againſt the Guardian, if the value of the ward be not found, 16 *E* 2. *waſte* 117.

The return of the Sheriff is good by intendment, although he do not ſay, *In fait quod acceſſit ad loca, &c.* As a return that he did waſte in two Towns, and that he took the Inqueſt *de vaſto prædicto*, in one Town, *&c.* 12 H.4:3. where he made view to the Jurors, of all the places. But 16 *E*: 3. *Return de vie* 82. That although that he go to all the places, yet if he take the Inqueſt at one place, which is none of the place, he ſhall be amerced, and a new writ awarded; It is ſaid, 34 H. 6. 44. That the ancient form is as is, 12 H.4. 3. but the beſt courſe ſhall be to return the ſpeciall matter, (*s*) *Acceſſi ad loca & capi inquiſic. prout in ſcedula. &c.* See alſo there, that it is no return, *quod fecit vaſtum in diverſis Meſſuagis, &c.* in divers Towns, but it ought to be certain, as in a Barn, Chamber, *&c.* and that in ſuch a Town, or ſuch, &c. 34 H.6.45.

Waſte aſſigned in two Towns; the Defendant ſaid, that one is a Hamlet, &c. if this be found, all ſhall abate, without more; but if he found a Town by it ſelf, he ought to enquire of the damages of every parcell by it ſelf, for the waſte is confeſſed. And that although no waſte be found, yet the damages ſhall be taxed certain, 9 H.6. 66, 67. And ſee there that upon a forraign plea by which the Waſte is taken as confeſſed, if it be found againſt the Defendant, the ſame Jury ſhall tax the damages.

See

See 33 *Ed.*3. *Judgement* 255. Where upon a forraign Releaſe pleaded, the ſame Enqueſt did enquire further of the waſt, But where upon iſſue that there was no ſuch Town; it was found ſuch Town to the Damages, yet no judgment was, but a new Writ awarded to enquire of the Waſt, 13 *E.*3. *Waſt* 29. 28 *E.*3 *waſt* 66.

Upon a Writ of enquiry, it behooves that every parcell be found by it ſelf, *&c.* and what is become of the Trees, and what remain upon the Land, and if the Defendant have built a new houſe with them, *M.* 19 *E.* 3, *Waſt.* 30.

And where a Writ iſſueth upon a preſentment for the King, *&c.* The Sheriff ought to enquire, if the party hath found Sureties not to do waſt, and how he holdeth, and how it came to the Kings hands, 20 *H:*3: *Waſt* 138.

Waſt found before Juſtices of *Niſi prius*, and at the day in bank the Sheriff amended his return, and make it, that he had done waſt in diverſe places through the whole wood, where it was before; that he had done waſt in a hundred trees, price every one, *&c.* and he did well to make it certain, 20 *E.* 3. *amendment* 67.

A new *Venire facias* was awarded, becauſe the firſt was not, that he ſhould not take them, who were of any kinn or affinity to the Plaintiff or Defendant, 2 *H:*4. *waſt* 57.

Quere if the *Venire facias* ought to have this clauſe, *Et interim terram illam videant*, when the iſſue is upon a collatterall matter, as upon a confirmation, that the Enqueſt was diſcharged upon that Challenge, 7 *Edw.* I.

XI. *Where a Writ ſhall be awarded to enquire of waſt, and where it ſhall be taken confeſſed upon the plea, and where damages ſhall be aſſeſſed of every part by it ſelfe, and the form of Enquiry.*

AT the grand diſtreſs, a Protection was caſt, and at Reſummons hee did not appear, a writ of Enquiry ſhall not be awarded, but a *Pone per vadios.* 27 E.3. *waſt* 13:

Summons, Attachment, and Diſtreſs, is the proceſs given by the Statute, and upon a *Nihil* at every return, a Writ of Enquiry ſhall be to the Sheriff, 21 *H.*6. *waſt* 45. 12. *H,*4 4. And there it is ſaid, That at the Common Law, the proceſs was diſtreſs infinite.

And the waſt being found upon a Writ unto the Sheriff upon Default, the Tenant ſhall not ſtay the judgment by alledging that he was not ſummoned, *M.* 19. E. 2. *waſt,* 119.

A Writ of Enquiry ſhall iſſue forth, notwithſtanding the incertain Aſſignment, *Waſt* 100.

In

In a Writ of waſt, the Defendant did demur, if the reverſion did paſs by the name of lands and Tenements, and that being adjudged againſt him, a Writ of Enquiry ſhall not iſſue forth, the waſt is confeſſed, but a Writ of enquiry for the damages only, 34 *H.* 6. *waſt* 40. 9 *H.* 6. *waſt* 40. and other books contrary.

Vi. 4 *Eliz. Dyer* upon *Nihil dicit* in waſt, a Writ iſſued to the Sheriff, That in *Propria perſona accedat ad locum vaſtatum*, to enquire of the damages, it was holden that he need not go in perſon, according to the Statute of *Weſtminſter* 2. for that Statute extends only to a Writ of Enquiry of the Waſt it ſelf.

If at the grand Diſtreſs returned, day be given over upon the plea of the Defendant who doth not appear at the day, now a Writ of Enquiry ſhall not iſſue upon the Statute, but diſtreſs infinite at the common Law, 7 *H.* 4. 15. *Waſt* 61.

XII. *The form of the Writ of Waſt.*

VVAſt of Exile of people, the Writ was good, being generall *Quod fecit vaſtum de hominibus* 2 *H.* 6. 11. *M.* 12 E. 2. *waſt* 13. *vi* 3 E. 2. *waſt* 2.

Waſt upon a Reverſion granted to husband and wife, the Writ was *Ad exhæreditationem eorum*, and good, *H.* 3 E. 2, *waſt* 4. See 8 *R.* 2. *VVaſt* 147. where ſuch a writ was awarded good, *Ad exhæreditationem*, of the husband.

If an Abbot brings the Writ, it muſt be *exhæredationem eccleſiæ*, and ſee 31 *Ma. Dyer* 129. The Biſhop of *Carliles* caſe, the Writ was, *exheridationem Epiſcopi*, and yet ſee *F. N. B.* 59. *O.* That a Biſhop ſhall not have Waſt.

A Writ of waſt brought by husband and wife, and of the Right of the wife, the writ was, *Ad exhæreditationem* of the wife, and awarded good. But a writ of Eſcheat of the right of the wife, ſayd, *Ad eos revertere debent*, 3 *H.* 6. *waſt* 34.

W. and *H.* ſeiſed to them, and the heirs of W. leaſed for life by fine, ſaving the Reverſion to them, and to the heirs of W. and bringing waſt, the writ ſaid *Ad exhæreditationem*, W. and well, 2 *H.* 5. 7. *Waſt* 54. 18 E. *Breif* 835.

Upon a Leaſe of the Wife during coverture, for the life of the wife, waſt lyeth after, ſuppoſing to the diſinhereſie of the wife, 41 E. 3. *waſt* 83. 42 E. 3. *Breif* 554.

Waſt by *I.* as Lord by Eſcheat after the death of him in the remainder, who was Baſtard and dyed without iſſue, without ſuppoſing a Tenure between the Leſſee and him: Alſo the ſaid Defendant and his Wife had an Eſtate taile, &c. and the Writ ſaid, After the death of the wife and he in the remainder to the Plaintiff as Lord, *Revertere debent*, and did not make mention after the death of him the Defendant, and good, 34 H. 6. 1. *waſt* 34.

Waſt by husband and wife, ſuppoſing that they did leaſe &c. good, 3 H.6.53. 22 H.6. *waſt* 47.

At the Common Law, no Writ of waſt was againſt Tenant by the Curteſie, and therefore the Statute ſhall be recited in the writ, otherwiſe it is againſt Tenant in dower, and guardian in Knights ſervice, 20 H.6.1. *waſt* 43. 12 H 4.3. *waſt* 62. *F.N.B.* 55. the writ good, though he doth not recite the Statute, but the Regiſter doth recite it, *Fitzherberts Reports Nat. Bre* 56.

If Leſſee for life doth waſt, and granteth over his eſtate, the Writ ſhall be againſt the Grantor, and ſhall ſay, *Quas tenet*, but againſt guardian the heir being of full age, and againſt Leſſee for years, his Term being ended, the Writ ſhall ſay, *Quas tenuit*, 41 E. 3.23. *waſt* 70. So when *Ceſtui que uſe* dyeth, the Writ ſhall be *Quas Tenuit*, 1 H.6.14. 46 Ed.3. 25 40 E.3. *waſt* 67. and *quas tenet*, againſt guardian who hath granted his eſtate *temp.* E.1. *waſt* 126:

After confirmation to the husband and wife who held for her life before, the writ ſhall ſay according to the purchaſe of the wife before Coverture, 17 E. 3. *waſt* 109. but of the Writ where the coſimation is to them for their lives, See 6 E.3. 19.

If Tenant by the curteſie maketh a Leaſe for years and dyeth, it ſeems the writ may ſay that the heir leaſed, but if he declare of a Leaſe of his brother there, of ancienter time then the Leaſe of the Tenant by the curteſie, or at the ſame time, where in truth he confirmed after, the Tenant ſhall abate the writ; 8 E.3.25.

A man leaſeth to husband and wife for the life of the Leſſor, and grants them by another Deed, that they may fell trees: *&c.* without impeachment *&c.* and afterwards releaſeth to the husband and wife, and to the heirs of the husband who dyeth, his heir bringeth waſt, ſuppoſing the Leaſe unto the husband and wife, and to the heirs of the husband, and it was the opinion, that upon the matter ſhewed, it doth not lye, living the Leſſor, but otherwiſe the writ is good, 8 Edw.3.34. ſee of this, 5 H: 5.9.

Waſt, *Cum de communi conſilio, &c.* in Lands, houſes, woods, and Gardens, hath done waſt in woods, *et hominibus quas tenet*, of the plaintiff, *ex aſſignatione* W. of whom the Defendant, *Tenuit adeundem terminum*, without mentioning any leaſe, and good, *M.* 11 E. 2. *waſt* 113.

The Leſſor puts out his Termor, and enfeoffeth a ſtranger, upon whom the Termor enters, commits waſt, he brings an action of waſt, the Writ ſaith, *ex aſſignatione*, and good, 5 H.5.12. *waſt* 56: 4 E.325: *waſt* 92. agrees, where the feoffment was by the aſſent of the Termor, ſaving his Term, who afterwards attorned, and he need not ſhew any thing of the Aſſignment.

And where a Reverſion is deviſed, the Writ may well ſay *ex aſſignatione*, or *ex diſmiſſione*, or *ex legatione*, *vi.* 34 H.6.7. *waſt* 50: 10 H.6. 8. *breif* 13.

Waſt

VVaſt againſt Tenant in Dower, ſuppoſing that he held of his inheritance, without more, where the Husband was ſeiſed, acknowledged a Fine, and took back an eſtate for life, the remainder in Tail to the anceſtor of the plaintiff, the writ ſhall not ſay, *ex aſſignatione*: So where the husband alieneth the Land and dieth, his wife is endowed, the writ ſhall be generall, that he held of his heritage, not *ex aſſignatione*, but where the Reverſion is granteed, 38 *E.*3. *waſt* 66. See 46 *E.*3.17. *waſt* 68.

VVaſt againſt husband and wife, ſuppoſing that they did VVaſt where it was done before Coverture, and good, and the husband charged, 19 *E.*3: *Brief* 246.

Attachment of VVaſt againſt the Guardian by the mother of the infant in his own name, 15 H.3: *waſt* 131. *P.*10.H. 3. *waſt* 142.

XIII. *Pleas to the Writ of Waſt, and where he ſhall have one Writ upon ſeverall Leaſes.*

THE Defendant ſaid, that the Plaintiff had diſſeiſed him of part of the Land, hanging the VVtit, *Herle*, anſwer to the reſt, for he hath not aſſigned waſt in that parcell, 8 *E.*3 *VVaſt* 16. 7 *E.*3.43.

VVaſt againſt a woman, ſhe pleaded a Leaſe to her husband and her, after which, no waſt, a good plea, and the writ ſhall be maintained, to ſay, that ſhe alone did the waſt, without maintaining that the Leaſe was made to her alone, for ſhe had pleaded that matter to the action, 3 *E.*3. *waſt* 21.

In waſt upon a Leaſe to the Defendant, he ſhewed, that the Leaſe was to him, and unto husband and wife, the husband died *&c.* it is no Plea, without ſaying, that the wife was ſeiſed the day of the VVrit &c. alſo it is no Plea, that the wife hath releaſed and confirmed to the defendant, after which no waſt *&c.* for this is alſo his waſt, 46 *E.*3. *waſt* 93.

The ſurvivor may plead a Feoffment as to him alone, which was to him and an another, 14 *E.*4.1.

If three Leaſe, and two releaſe to the third, he may have waſt, ſuppoſing that he himſelf did alone Leaſe, but if one had but for life, and the two releaſe to him in Fee, he ought to have a ſpeciall writ vpon his caſe *ex aſſignatione*, and if two Coparceners leaſe, and one dieth, the other ſhall have a writ, ſuppoſing that he leaſed, 46 *E.*3.17. *waſt* 88. See 48 *E.*3: *waſt* 94.

VVaſt againſt Tenants in Common of a wood, the Defendant ſaith, that *A.* holdeth with them in Common, the Plaintiff ſaith that *A.* holdeth in Dower of the Aſſignment of the Plaintiff, ſo ought ſhe to receive all the property of the Plaintiff, if ſhe were named, alſo by ſo much it ſhould be ſuppoſed, that ſhe had equall eſtate in Common with both, the defendant did demurre &c. *M.* 3. *E.*2. *Waſt* 85. *F. N. B.* 60.

Two Coparceners, one hath iſſue and dieth, the iſſue ſhall not have waſt againſt Tenant by the Courteſie *&c.* without naming her aunt, as *Fitzh.* reports, *N.B.*60.*&c.* 9 H 6.11.*waſt* 41.

No ſuch Town without addition, ſhall abate this writ, 13 *E.*3.*waſt* 29. So that one of the two Towns is the hamlet of the other, ſo that one waſt is twice aſſigned, 9 H. 67.waſt 40.

No ſuch Town, nor hamlet is no plea, becauſe it may be a Mannor, but the Plaintiff did maintain, that it was a Town, 7 H. 4.8.*waſt* 60

Over-Dale and Nether-Dale is no Plea, becauſe returned by View, 9: H.6:42.*Brief* 54:

It is a good Plea, that the Land was given to the Plaintiff and his wife in ſpeciall Tail, and that ſhe is dead, and that hanging the writ, the iſſue is dead, 2 H.4.21.*waſt* 58.

Non-tenure is no Plea in VVaſt, 40 *E.*3: *waſt* 67: 38 *E.* 3.*waſt* 66. but but the Aſſignee of the Leſſee may well ſay, that the firſt Leſſee is ſeiſed, without that, that we have any thing &c: 44:*E.*3:21.

VVaſt of Land, and a wood, it is no Plea, that the wood was excepted by the ſame Leaſe; for if he leaſed it by another deed afterwards, the whole writ is good, 44 *E.*3:*VVaſt* 79:*Fitzh:N:B:*60.

VVast may be well brought after an Entrie for forfeiture, 45 *E:*3: *waſt* 87.

Nonhability, if one defendant, as *Cochanon*, ſhall abate the writ, if it be not maintained by ſpeciall matter, 19 *E:*3:*waſt* 95.

Waſt againſt Guardian, without alledging in Right, or in fact, and declared *de hominibus & boſcis* ge nerally without alledging other words of form, 6 *R.*2.*Waſt* 97.

Where three Coparceners bring the Writ, the death of one of them ſhall abate the whole Writ, 8 *E.*2:*Waſt* 110.

The Defendant ſaith, that he holdeth of the Leaſe of the Father of the Plaintiff, and *A.* his wife, and that *A.* is alive, the Plaintiff ſaid, that *A:* had nothing, but as wife, and upon that they were at iſſue, 15 *E.*2. *waſt* 116.

XIV. *The Count, or Declaration Wast.*

VVAſt, the Writ was gnerall de *domibus*, *boſcis &c.* and the Declaration of a *Pale*, and good, if the Action lieth for the Pale, 22 *H* 6.47.

Waſt againſt Tenant in Dower of his inheritance, if ſhe doth not appear, it needs not to be alledged in the Declaration, that the Plaintiff is heir or privy &c: but it onely ought to ſhew the certainty of the Waſt, and it ſhall not be intended by Grant, Reverſion, for then the Writ ſhould be *ex aſſignatione*, but if ſhe do appear, then he ought to make him privy

privy in the Declaration, and in a *Quare impedit* he ought to alledge a certain cauſe in the Court, 34 *H.*6 48 *Waſt* 51.

The Writ *ex aſſignatione*, and the Declaration was upon a Leaſe for years, by *T.* who put out the Leſſee, and enfeoffed the Plaintiff, and the Leſſee now Defendant did re-enter, 5*H.*5.12. *Waſt* 6. 46 *E.* 3 *Waſt* 92.

Waſt, Declaring, that he cut Haſells, Thorns, and VVillows, and ſet the price of each by themſelves, and that he did dig up the roots &c. and good, and it ſhall not be ſaid a demanding of the place twice, *P.* 41 *E.*3.*Waſt* 82.

So of Stocks and Germines 9 *H.*6.67.

VVaſt, the Plaintiff declared upon a Leaſe for years, to begin at ſuch a Feaſt, the Defendant ſhewed forth a Deed, proving the ſame to begin at another Feaſt, yet the Declaration was good, becauſe it is not founded upon the Deed as a Covenant &c. 31 *E.* 3. *Waſt* 102. Alſo it is good without ſetting forth for how many years &c. *Pig.* if the Defendant had not paſſed the advantage of it, for the Enqueſt was taken by deſault, *Vide* 5 *H.*5.*Waſt* 55.

VVhere a man declares of waſt in divers Towns, he need not ſhew the value of each by it ſelf, nor where the exiſement of the Villains is done, 9 H.6 42 *Count* 17. But muſt ſhew the certainty of every thing whereof the waſt is aſſigned, 9 H.6:66.

Upon a generall writ, he declared, that the Defendant did ſuffer the hedges to be unrepaired, by which Cattell did deſtroy our Germines, 20 H.6.*Waſt* 42.

So that he ſuffered the Land to be drowned &c: for not repairing the banks, *&c.* 20 H:6:1:46 *E.* 3. *Waſt* 91.

The writ ſaith, *ad terminum annorum*, and the declaration good of a Leaſe for half a year, 7 H:7:2: 46 *E*:3:31 The Leaſe was unto the Teſtator of the defendant for life, and half a year over, 46 *E.*3.31.

VVaſt by two upon a Leaſe by Fine, where the Reverſion was to them and the heirs of one of them, they were driven to ſet forth in the Declaration of whoſe gift, 2 H: 5:*Waſt* 54.

Replication in Waſt.

THE Guardian ſaid, that he builded a houſe for the Tenant in Dower, it is a good Replication, that that was upon the Land of another, and not upon the Land of the infant, 9 H.6:*Waſt* 137.

The Defendant pleaded the Deed of the Plaintiff, reciting a Leaſe of his father, and further Leaſed and releaſed the Action of waſt &c: *pro toto tempore ſuo*, the Plaintiff did averre the VVaſt was done after, with that, that nothing paſſed by the deed, upon which iſſue joyned, 31 *E* 3. *Waſt* 103

It is a good Replication, that the Anceſtor who granted that he ſhould

not

not be impeached of waſt, had but an eſtate in tail, in reverſion &c: 38 *E.*3 27: *Waſt* 66.

VVaſt of Haſells, the Defendant ſaid, that they grew in a Park under Oaks, it is a good Replication that they grew in a quarter of the Park, where were no Oaks *&c*:40 H.3.25 *Waſt* 69:44 *E.*3.*waſt* 82.

The Defendant ſaid, that the houſe fell by Tempeſt, it is no good Replication, that the Defendant did covenant to repair them, and to leave them in as good a plight &c:43 *E.*3:6:6:*Waſt* 76.

The defendant ſaid, that he Leaſed excepting that part wherein the VVaſt is aſſigned, it is a good Replication, that he leaſed that afterwards, 44 *E*:3:34:*Waſt* 79.

The Defendant ſaith, that the Plaintiff had not any thing, but in Coparcenery with *K*: who took to husband *R*: had iſſue *J*. and died, and *R*: is living, the Plaintiff did averre that ſhe alone did make the Leaſe, and upon that at iſſue, 22 H.6:24:*Waſt* 47.

VVaſt againſt Tenant in Dower, ſhe ſaith, that ſhe leaſed unto the Plaintiff and *R*: for life, upon Condition, and entred for the condition broken, after which ſhe *&c*: it is a good Replication, that he was within age at the time, and did not agree, nor took the profits, 30 *E*.3.16. *waſt* 26.

XV. Waſt againſt husband and Wife, and bar to it, and Pleas for the Wife &c. *after Receit, and waſt againſt a woman after the death of her husband, or againſt Tenant for life, and him in the Reverſion.*

WAſt againſt husband and wife, after a Plea, that no waſt was done, ſhe being received, ſhall not pray that he aſſign new waſt, 8 *E.*2.*waſt* 16.

VVhere a woman ſhall be puniſhed for waſt in the time of her husband, See 10 *E*.3.17: and how the VVrit ſhall be for waſt before coverture, 42 *E.*3. *Breif* 554.

VVaſt againſt *T*: found by default, *W*: ſhall not pray to be received upon a Leaſe to him, and *J*: and his heirs, contrary to the writ, 14 *E*:3: *Waſt* 27.

VVaſt againſt husband and wife, after no waſt pleaded, the wife was received at *Niſi Prius*, and pleaded ſpeciall Bar, 21 H:6:*waſt* 53.

VVaſt upon a Leaſe by husband and wife, ſee the form of the writ, 22 H:6:*waſt* 47.

XVI. *Where*

XVI. *Where Waſt ſhall be aſſigned, and how aſſigned twice, where aſſignment ſhall be made after the writ brought.*

WAſt aſſigned in Trees, and in ſtocks and germines of the ſame trees, and good by *Paſton*, it behoveth that he alledgeth the value of the trees, and alſo of the ſtoks, and germins, becauſe ſeverall things, 6H.67. *waſt* 40. 22 H.6. *waſt* 46. agrees *per Curiam*, ſee 41 *E.*3. *Waſt* 82. *contrary*.

If the Defendant make default, the Plaintiff ſhall make aſſignment to have a Writ to the Sheriff, ſhall ſhew the quantity of the Land waſted, and the certainty of the waſt, 34 H. 6.48. *waſt* 51.

Waſt by an Abbot &c. upon default, he ought to aſſign the certainty, if in his time, or in the time of his Predeceſſor: So where a Leaſe was to husband and wife, &c. and becauſe the Sheriff did not enquire of it, a writ was awarded to make new enquiry, 2 H.4.3. *Waſt* 57. But it is ſaid, 21 H. 6. *waſt* 53. where the Succeſſor may puniſh waſt, as an Abbot, it need not appear in the writ, nor in the Declaration, in whoſe time *&c.*

Waſt found by default againſt husband and wife, the wife received, pleaded, no waſt, the other ſhall not maintain that waſt was after the writ, for he cannot ſo aſſign it, but he ſhall recover the place waſted and damages, but *Quere* if he may charge the Jury with it, where it is at their liberty to find it, 19 H. *Waſt* 121.

XVII. *What act or thing ſhall be ſaid Waſt, what not, and where doing or omiſſion of a thing ſhall be ſaid waſt, where not.*

THE breaking of iron, or timber to repair a Mill leaſed to him for years, is waſt, 4 *E.*3. *Waſt* 22.

The Guardian may well take down the Poſts, where the houſe is fallen by a wind, or a houſe which was never covered, and burn the wood, 40 *Aſſ. waſt* 24 22 H.6. *waſt* 48.

Cutting of Oaks which is dead wood, is not waſt, but putting of beaſts into a Cloſe, which deſtroy the young ſprings, is waſt, ſo cuting down of green wood, where there is ſufficient dottards and dead wood, 20 E.3. *Waſt* 32: 21 H:6: *waſt* 53.

To ſuffer Land to lie freſh, is no waſt, 2 H.6:11: 37:5 H:3. *Waſt* 15. So is it of the overthrowing of Saff on beds, 10 H. 7:3: but otherwiſe it is of plowing of Meadow, *F N B* 59.

15 *H.3 waſt* 131. 20 *E.1. at.* 22 *H.6.24.* 16 *H.7 Act.*

To ſuffer a houſe to decay for want of covering, where it was well covered at the time of the Leaſe, is waſt, 7 H.6. *waſt* 37.

Babbington ſaith, that Quick-thorn deſtroyed is deſtruction, and ſo wit him

within the Statute, 9 H:6:67:*waſt* 40: See of that 46 E:3: *waſt* 88. But *Chandiſh* ſaith, that waſt ſhall not be aſſigned in Underwoods, if not by eradicating of them, ſo as they cannot grow again.

But ſee 45 Edw 3.25. *waſt* 69. That Haſells and Willows ſhall not be ſayd underwoods, but where they grow under, and not amongſt great woods 20 *E*:3 *waſt* 32. 10 *H*. 7.3.

Willows growing in the ſight or view of the Mannor, are waſt, if they be cut down, 40 *E* 3. 15. *F.N.B.* 60. So if they do uphold a Bank, 12 *H*. 8.1.

See 8 *E* 2. *waſt* 111. and *temp* E.1. *waſt* 124. That Willows, Haſells and Aſhes of ſmall value are not waſt, becauſe they will grow again.

Of waſt in Gardens and Orchards, ſee 16 H:3 *waſt* 135. 10 H:7.3. 44. E.3. *waſt* 7.7 E 1. *Waſt* 122.

Leſſee for life years, or Tenant in Dower ſhall not preſcribe for the cutting of ſeaſonable wood, every ten, or ſeven years, 40 E*d*,3. 25. 10 H.*6*. *waſt* 42.

Leſſee at will of a wood, may ſell unde woods &c. but if they be great Trees, he may not cut them down. 12 E.4.8. Where the Leſſee did cut to ſell, ſee there, and 17 E 3. *Waſt* 101. of the cutting of ſeaſonable wood in ſuch manner as hath been uſed to be, is no waſt, *Fitzherberts Natura Brevium* 59.

Digging of Gravell or clay is waſt, but it is a good barr, that he digged clay to make morter, to repair the houſes, and if he ſell any part of it, it is waſt, or if more then is needfull, wherefore he ſayd, that the Surpluſage was digged the better to convey the water away which drowned the land, and that he let it lye upon the land without ſelling of it, 22 H.6. *waſt* 48 41 *E*.3. *waſt* 82: *F.N.B.* 59.

To ſuffer a Wll which is covered to fall down, is waſt. 22 *H* 6: and 44 *E*.8:44: 10 *H*. 7:3: Removing of a furnace which is annexed to a freehold is waſt, but if the Leſſee ſet it there hee may remove it during the Term, 42 *E* 3,6. 20 H. 7: 13.

XVIII. *VVaſt with Privity or Attornment.*

THe Lord by eſcheat of a Remainder, ſhall have waſt &c. 3 *H*. 6: *waſt* 34. 34 H:6.7: *and* 8. 45 *E*:3:3:

If the Leſſor for life grant the Reverſion to an Abbot, the Lord ſhall have waſt, but there he behooves to claim for the miſcheif of the ſtatute, but the Lord of a villein who purchaſeth a Reverſion ſhall have waſt without claim, ſo the Deviſee of a Reverſion, ſo he of whom Tenant for life prayeth in aid, as of him in the Reverſion, ſo he who recovers a Reverſion, ſo where the Leſſor or Leſſee enfeoffeth a ſtranger, upon whom the Leſſee entreth, &c. ſo where the King grants a Reverſion, but the

grantee

grantee of the Reverſion by fine ſhall not have Waſt without Attornment, 34 H.6: 7. and 8: 5 H: 2: 5: 5 H: 5: *waſt* 56: 2 H. 5 *Monſtrans de faits* 121: 48 *E*:3.15:12 *E*.4:3:39 H:6:24: 5 H:7:19: *acc*: 34 H:6:7: *and* 8: 34 H:6:24: *Litt*: 6 *E*: 3: 17: 45 *E*:3:3: 13 H.7:27: *by Vaviſour*.

Two husbands and their wives make a Leaſe, one of the wives after iſſue dyeth, her husband ſhall joyn in waſt with the other parceners, 26 H. 6. *waſt* 47. *vi*. 35 H.6.23. 41 *E*.3.7. 48 E:3:14:

He in the Remainder ſhall have waſt, but if the Leſſor releaſe to him in the Remainder for life, and his heirs, he ſhall not have waſt, becauſe he never had Attornment. otherwiſe it is of ſuch a Releaſe to him in the Reverſion for life, for he ſhall puniſh waſt done after the Releaſe for the Attornment before, &c. 48 *E*:3:16: *waſt* 94: *vi*:46: *E*:3: *waſt* 88:

XIX. *Where the Plaintiff ſhall recover in Waſt more then the place waſted, and what ſhall be ſayd waſt, and where he ſhall recover the place waſted after the Writ.*

THe Hall ſhall not be recovered for other places waſted in the houſe, 15 E:3. *waſt* 108. But for waſt found in the Hall all the houſe ſhalbe recovered, becauſe the ſame is the principall.

All the wood ſhalbe recovered for waſt done in diverſe places of it &c: 20 E. 3: *Amendment* 67: 4 E. 3:32. and ſo although there be meadow, or Arable Land in parts of the wood, if it be all one wood, and any waſt in every part, *temp*. E. 1: *waſt* 227: 7 E:3: *waſt* 193. he cannot recover the whole wood upon the cutting down of four Oaks in diverſe places of the wood.

Ing. ſaith, That for cutting down of appletrees in a garden which encompaſſed the houſe, a man had recovered the houſe: *Heng*, That was for another cauſe, *temp*. E:1: *waſt* 127: But *Stone* agreeth with *Ing*: 4 E:3 34: *eſtrepement* 10.

Waſt aſſigned in a Grange, Cottage, and Appletrees, the value of each found, and he did recover the place waſted, and treble damages, but not for the incloſure becauſe there was no waſt in any houſe in the incloſure, *temp* E:1 *waſt* 123.

The Plaintiff ſhall recover alſo the place waſted after the Writ brought, and damages, 19 E:3: *Waſt* 131:

XX. Waſt by one Joynt-Tenant or Tenant in Common, againſt the other.

IF there be three Tenants in common, and one commits waſt, the other two may joyn in an action of waſt againſt him, *M*:3 E:2: *waſt* 25: One Joynt-Tenant ſhall have waſt againſt the other, becauſe they are not compellalbe to make partition, by *Fitzherbert* and others, 27 H:8:13: But ſee 15 E:3:*waſt*:96: contrary, where they were Joyntenants to them and the heirs of one of them.

One Coparcener ſhall not have waſt againſt the other, becauſe they are compellable to make partition, 27 H.8:13: and therewith agrees, 9 H:6: 11: See 9 H:6:*waſt* 41: waſt for one parcener againſt the husband of the other Tenant by the curteſie, aſſigned in the moyety.

Vi: That Tenant by copy of Court roll cannot cut down Trees to ſell; but he may do for neceſſary Reparations, 9 H:4:*waſt* 59.

XXI. Where the Tenant ſhall be diſcharged by Reparation, after waſt done.

IT behoveth that the Reparation be done before the Writ brought, 38 *Aſſ*. *waſt* 23. and ſo he may well cut Trees to repair, 40 *Aſſ*. *waſt* 24. 11 E:3.*waſt* 28. 29 *E*. 3, *waſt* 30. and 20 *E*.3. *waſt* 32. 22 *H*. 6 *waſt* 48. 12:*E*.3. *waſt* 28. 21 H.6 *waſt* 53. But he cannot juſtifie the cutting down of more trees for the repairing of the houſes, then are neceſſary, 32 *Ed*.3. *waſt* 101. 41 E.3.*waſt* 82.

XXII. The form of the Return in a Writ of waſt.

OF the Returne of the *Diſtringas*, in VVaſt, ſee 34 *Hen*. 6: 48: *Waſt* 51.

And where waſt is aſſigned in diverſe Towns, &c. 12 H:4: *waſt* 62:and 34 A:6:48:

And of the Return amended, 20 F:3:*Amercement* 67:

XXIII. *Waſt*

If th- VI. *Waſt againſt Tenant for life before the Statute, and the Judgement.*

NO waſt was pleaded in iſſue, and Exilement found, and good, 15 H 3: *waſt* 130: and then no waſt before the prohibition, was a good plea, but upon waſte found, Damages were recovered, and it was ſaid to the Tenant that he do not waſt, upon pain of Loſſe of the Land, 4 *H*: 3: *waſt* 140: and he found pledges &c, 15 *H*: 3: *waſt* 132. for waſt done in a houſe, he was commanded to re-build it, and gave ſureties that he ſhould not do waſt after, 9 H. 3. *waſt* 137: and 20 H: 3: *waſt* 139: and 10 H: 3: *waſt* 142: and where Tenant in Dower did waſt in a Wood, it was awarded, that the Plaintiff ſhould have the wood, and that ſhe ſhould have houſe-boote &c: for the Plaintiffs life, and was amerced for waſt done againſt the Prohibition, 4 H. 3. *waſt* 120:

VOUCHER.

I. *Where a man ſhalbe vouched by reaſon of a poſſeſſion, and bound to warranty by it, of a Baſtard, younger ſon, and heirs in Gavelkind.*

IF a Baſtard entreth, and occupieth with the Mulier, hee ſhall be vouched with the Mulier, if he occupy as heir, but if the plea do ſtay in that caſe for the Nonage of him who is the Baſtard, to take away ſuch delay, Baſtardy ſhall be a good Counterplea, *P.* 32. *E.* 3. *voucher* 94. But where the Baſtard is vouched by himſelf as heir, it is no Counterplea to ſay that he is a Baſtard, becauſe he is Heir in poſſeſſion, 19 E. 3. 59. for a ſtranger ſhall not conſeſs any heir, but he who entreth as heir, and continueth poſſeſſion, but if he entreth with the Mulier, both ſhall be vouched, 20 E. 3. *voucher* 119. 43 Ed. 3 *Voucher* 64.

But contrary if the heir of the Baſtard be in by deſcent, and the Mulier dyeth without heir, now the Warranty is extinct, for although the Baſtard hath the Land by way of Eſtoppell, yet as to another eſtranger, he is a meer ſtranger to the Anceſtor, ſo it ſeems he may well avoid the voncher

cher in every caſe, where he is vouched without the Mulier, for continuance of poſſeſſion ſhall make him heir as to the Titles of ſtrangers, 7 H:7.2: 22 E.4.10.

And therefore if the Baſtard be in by deſcent, as heir to the tail, and the Mulier dyeth without iſſue, he in the Remainder, or the Donor ſhall have a Formedon againſt the heir of the Baſtard, notwithſtanding the continuance of the poſſeſſion of his Father without interruption, 39 Ed. 3.38.

A Baſtard vouched as heir, dyeth without iſſue, the Voucher is gone; but *Wilby* ſayd, That the Demandant ſhall vouch at large, 18 Edw. 3 *voucher* 3.

The elder brother ſhall be vouched with the younger brother, who hath Land in Burrough Engliſh, one as heir at the Common Law, the other by the Cuſtome, 11 *H*:4. 21. 22 *E*.3 *voucher* 22. So if the younger Brother be Demandant, but he ſhall never be rebutted by the warranty of the Anceſtor, 11 H.4.21.

A man ſeiſed of Land at the Common Law, and in Burrough Engliſh, enfeoffeth his eldeſt ſon who giveth back the land to the Father and the youngeſt ſon, and the heirs of the Father, who dyeth, the youngeſt being impleaded ſhall vouch the eldeſt, who ſhall revouch him as heir, and the youngeſt by the Cuſtome, and was ouſted of the voucher, becauſe the whole warranty was caſt upon by the Diſcent, ſo extinct, otherwiſe it is of two parceners in ſuch caſe, 40 Ed:3: 14.

The younger ſon ſhall never be vouched without the eldeſt, nor with him for cauſe of poſſeſſion, nor for continuance of it, but only for land in burrough Engliſh, which might be recovered in value againſt him, as heir by the Cuſtome, for none ſhall be heir by continuance of a poſſeſſion, but a Baſtard, 10 *E*:3:1:43 *E*. 3.3: 38 *E*.3. 32. *contrary*.

Alſo the heirs in Gavelkind ſhall not be vouched without naming him who is heir at the common Law, 32 *E* 3 *voucher* 94 31 *E*.3. *Counterplea of voucher* 88. 33 *E*.3 *voucher* 313. and 314. See 11 *Ed*: 3: *Debt* 7. All were charged for the death of the Anceſtor, upon a voucher of the heirs in Gavelkind, ſee 38 E.3.27. where it is a good plea for the heir of the Vouchee to ſay, that he hath a Brother, and nothing deſcended but in gavelkind, *vi*. E.3.27.

And that the warranty of Land Gavelkind ſhall not be pleaded againſt the younger brother by way of Rebutter, ſee 44 E:3:16: 22 E:4. *acc*. if the elder ſon be generally vouched with the youngeſt by the cuſtome, the cuſtomary Lands only ſhall be reſerved in value, but if he vouched expreſly as heir, and the other by the Cuſtome, there both their lands ſhall be in value. 5 E:2: and 22 E.4: 10.

The plea ſhall not remain for the nonage of one Brother in Gavelkind, if the Demandant will aver, that he hath none of the Land in Galvelkind, 23 E 3.

If

If the heir of the part of the Father hath nothing, the heir of the part of the Mother ſhall be vouched with him to render in value, 31 E.3. and 7 E.3.66 and 5 *E.2. Avowry* 207. but ſhall not be charged for Debt. 11 H.7.12.

See 26 *E.*3.59. Tenant by the curteſie vouched with the parceners to render in value.

II. *Voucher good by Entendment.*

WHere a man voucheth for rent, it ſhall be intended *prima facie*, Rent ſervice, and that he who voucheth is pernor in fee, for the Ter-Tenant ſhall not vouch for a Rent ſervice, otherwiſe it is of the pernor, 35 H 6.

III. *Where one ſhall vouch two by one warranty, or one at his Election.*

WHere one of Vouchees is returned dead, It is holden, that the Voucher ſhall abate, and the Tenant ſhall be driven to revouch the other, and the heir of him who is dead, for it is ſayd, that the charge ſhall not ſurvive, 17 *Edw.* 3. 41. 22 *Edw.* 3. *Counterplea of Garr.* 8.

But it is holden that a Warranty ſhall ſurvive 17 *E.*3.8. and 30 *E.*3.31 the firſt voucher did ſtand upon ſuch a Return, but ſee there that he might have revouched the ſurvivour and the heir of the other, if he pleaſed, and ſo it is holden, 31 *E.*3. *Counterplea of Voucher* 88. 32 *E.*3. *Voucher* 84. But 39 *E.*3.26. is, that the one ſhall not be vouched without the heir of the other.

It is holden; That where two warrant land, and one dyeth or both dye, the Tenant ſhall vouch the heirs of both joyntly, and ſhal have the whole value of each of them, or he may have againſt them both at his election, becauſe each doth warrant the whole, and both in common.

But hee ſhall have but one Recompence, 16 *Henr*: 3.13.

But the Law is holden otherwiſe of an Execution upon an Obligation, 11 *H.*7.2.

If two make a feoffment with warranty, by *Dedi* only, and one dyeth, the whole wartanty falleth upon the ſurvivor, and he alone ſhall be vouched, 39 *E.*3.26. there he vouched two, and ſhewed the Deed of one, and of the Anceſtor of the other, which had no warranty, but *Dedi*, and the voucher held good for the colour of voucher of both.

Husband

Husband and wife levy a Fine of the wives land, and they and the hei of the wife warrant the lands, the wife dieth, her heir ſhall be vouched alone, living the husband, becauſe he had nothing, 4 *E.*2. *Voucher* 242.

But ſee 22 *E.* 3. *Counterplea of Garr.* 8. The husband alone vouched Survivor; And ſee that for a Warranty made to the husband and wi and to the Heirs of the husband, the Heir of the husband ſhall vouch, ving the wife, 6 *E.*3. 27. *vi.* 28 E. 3. 7.

The *Mulier*, elder Brother, or the Heir of the part of the Father m be well vouched, without the Baſtard, younger Brother, or Heir of t part of the Mother: ſee for that 38 E. 3. *Garr.* 18: 31 E. 3. *Counterplea Voucher* 88.

IV. *Where a man ſhall vouch at large after that he hath vouch before, and where not.*

IF the Vouchee be returned dead, the Tenant may well vouch at larg ſhewing cauſe, otherwiſe not, by *Brian*, unleſſe he vouch within t degrees, 8 H. 7. 6. and therewith agrees 15 *E*: 3. *Voucher* 23. and 18 *E*: *Voucher* 3. *contr. in Dower.*

The plea doth ſtay for the nonage of the Son of the Vouchee who eth, the Tenant cannot vouch his Coſin of the whole blood, where hath a Siſter of the half blood, for ſhe is heir of the Father, and of th line the Warranty doth depend, 43 *E*: 3. 3.

If the Vouchee dieth, depending the Counterplea to it, the Tenant at large to vouch a ſtranger, becauſe the other is eſtopped, 41 *E*: 3. *Vouc cher* 71.

If the Demandant Counterplead the Voucher to three parts, and gran it to the fourth part, and the Vouchee dieth, it is holden that yet th Voucher ſhall ſtand of the three parts to try the Counterplea, and tha the Tenant ſhall vouch at large for the fourth part, becauſe the Vouch was not granted of the whole, 50 *E.* 3. 2.

He who hath prayed in aide, and the prayer that joyned in aide ſha never vouch at large, which he muſt do if he had made default, 9 H. 6. 3 and 4. 18 E. 3. *Voucher* 7. Alſo he ſhall not vouch after aide prayed o the King for recompence, 9 E: 3. 15. yet there is a difference taken after *Procedendo* granted, 3 E. 3 15. but 9 *E.* 3: 15 is contrary.

Husband and Wife Vouchees, he dieth, his Heir may well vouch, livin the wife, and that without cauſe 20 E: 3. *Voucher* 130.

The Heir being vouched in the Ward of two, one died, the Tenant di re-vouch the other, and a ſtranger, and was driven to ſhew cauſe, an for cauſe ſaid, that the Dead granted his Eſtate to the ſtranger.

The heir vouched in the Guard of *F.* Prior of *B*: and a ſtranger, the Pri- or dieth, the Voucher at large is to him, for by the name of *F.* he hath no

no Heir nor Succeſſor, but if he had been named by the ſpeciall name of the Corporation, the variance ſhall not be ſuffered, 5 E.3.

Note, where one Vouchee is returned dead at the Summons, and before his entry into the Warranty, the Tenant may well vouch a ſtranger in a *Precipe*: For *Thirn* ſaid, for yet it may be, that the firſt Voucher was falſe, *H.* 4 H.4.1.

Where one is vouched as heir to the Vouchee dead, it is a good Counterplea to ſay, that he is not heir, for he can vouch none but his heir, 41 E. 319.

Note, if *H.* enfeoffeth *L.* who re-enfeoffeth H. and A. his wife, H. dieth, and *A.* is impleaded, and vouched *L.* he dieth. It was ſaid, that *A.* as Aſſignee of *L.* might well vouch the heir of *H. M.* 2 *E.* 3.

If the Plea be diſcontinued, or otherwiſe without day after Voucher, yet the Tenant ſhall not vary, nor vouch a ſtranger, but the ſame perſon again, and by the ſame name, and the ſame addition, 8 E: 3. 7. 2 E:3.13. *Voucher* 191.

See 14 *H.*6,7. That upon the *Sequatur* not returned, the Tenant may well alledge that the Vouchee is dead, and vouch a ſtranger; but not if any Writ were executed, or the *Sequatur* returned, 14 H:6. 21. by *Vampage*.

V. *Voucher not ſuffered, which is contrary to the Writ.*

OSinage of the Seiſin of *T.* The Tenant cannot ſay, that *J.* Son of *T.* did aſſigne to her Dower, and vouch him: For the Tenant may grant ſuch a voucher without taking his Writ, and the Court ſhall never grant voucher contrary to the Writ, but Aide-prayer it may grant, 7 E:3.31.

Note, where the Writ doth ſuppoſe the entry by two, the Tenant may well ſhew that he did enter by one of them, and ſhall vouch, for that is not to the Writ, 6 E:3.46. *Cui in vita*, See alſo this is in, 44 E:3.31. Otherwiſe it is, when the Tenant ſaith, that he did enter by him and another, for there he cannot vouch, and the Writ ſhall abate, 48 E:3.29.

I. who was the wife of H. brought a Writ of Dower againſt A. who vouched *R.* the Son of *B.* becauſe *B.* gave the Land to the Tenant, and the ſaid H. her husband, and was ouſted of the voucher, for this is contrary to the Writ, which ſuppoſeth that *H.* to be the husband of the Plaintiff. Alſo it goeth in Bar of the Plaintiffs Action, if ſhe held joyntly with H. 2. E:3. 31. But ſee *Fitz.* that it ſhall not overthrow the voucher, but the matter of Bar, for it is ſaid there, that two women have had Dower of one husband.

Dum fuit infra ætatem, ſuppoſing that he is in by the Demandant: The Tenant vouched a ſtranger, and good, becauſe in by Title, yet it is contrary to the Writ, 35 E:3. But it is holden, 18 E:2. *Voucher* 241. that he

ſhall

ſhall be put to his Writ of *Warrantia Charta*, and ſhall not vouch.

Dower of the third part of a Mill, the Tenant vouched by a Deed whic was of a void place, and the Mill was made after, and he was ouſted the voucher, becauſe he might plead it to the Writ, 35 E. 3.

In a *Præcipe* of a Mannor except twenty Acres, the Tenant may we vouch of the whole Mannor, becauſe it is not contrary to the Writ, 4 E: 2. 23. ſee for this, 10 E: 3. 11. 19 E: 3. *Voucher* 123.

In what VVrits Voucher doth not lye.

ADmeaſurement of Paſture, the Tenant ſaid, that *T.* Lord grante to him Common for a hundred Sheep, and vouched him, and goo H. 31 H. 1. but ſee 32 E. 1. *Voucher* 303. that where the Plaintiff was ſeiſe of his Common the day of the Writ brought, that the Tenant could n vouch his Feoffor of the land, becauſe he was in by wrong: But ſee *T* E. 1. *Admeaſurement of Paſture* 11. that the Tenant ſhall vouch in th Writ, but not in a *Quod permittat*, in the *Quibus*, by *Herle*, 32 E: 3.

Quod permittat of Common in Groſſe, the Tenant vouched as lan diſcharged, and was ouſted of the voucher, becauſe it is another thin Alſo no Proces lyeth upon a voucher upon default at the Summons: An ſee 12 H: 3. *Voucher* 282. In a *Quod permittat*, of the nature of *Mortda ceſter*, ſuppoſing that his Father dyed ſeiſed, the Tenant vouched *T.* b his Deed, bearing date before the death of the Father of the Plaintif ſo before the Action accrued, &c. for which cauſe the Tenant traverſe the dying ſeiſed of the Father, &c.

In a *Quod permittat reducere curſum aquæ*, which ſuch a one *diverti* the Tenant for life vouched him in the Reverſion, and was ouſted of th voucher, but he ſhall have ayde (note the Writ was not good.)

Quod permittat proſternere molendinum quod B. pater A. levavit, th Tenant was received to vouch, 31 E. 1. (See here it was not his wrong See 30 E: 3: 26. contrary in a manner.

A Writ of Entry; *De tertia parte piſcariæ in aqua de* H. The Tenan vouched, and received, *t.* E. 1. *Brief* 861.

Voucher doth not lye in a *Nuper obiit*, 34 E: 1. and a Demurrer upo it is peremptory to the Tenant, ſo awarded, that he ſhould not vouch 30 E: 1. and 7 E: 3. 15. *Age* 111. the reaſon is given, 34 E: 1. becauſe th Demandant in that Action ſhall not plead with a ſtranger.

A Writ *de Secta faciend. ad Curiam de hundred* The Tenant ſaid, tha he held of the Biſhop of *S.* and was received to vouch him, 6 H. 7.

Quo jure, the Tenant was received to vouch a ſtranger, 16 H. 3.

Rationabilibus diviſis, againſt Tenant in Dower, ſhe vouched the heir in Reverſion, and the vouchee being preſent did enter into the Warran ty, 11 *b.* 3.

Terminus

Terminum qui preteriit in the *Per*, the Tenant vouched a ſtranger out of the degrees, and was received by the Court, 28 *H.* 3. *vj*: 44 E: 3: *acc.*

Rationabili parte againſt *B.* and others, by ſeverall *Precipes*, they vouch *B.* party who was preſent, and did enter into the warranty, and pleaded, 18 H. 3.

Secta ad molendinum in the *Debet & ſolet*, the Tenant did vouch his Feoffor; alledging that he held diſcharged, and was ouſted of the voucher, for the Suit doth not lye in extent, and proces cannot be made upon that voucher, 13 E: 3. ſee *t.* E 1. *Voucher* 246. It is ſaid, that this Suit is a Service; ſo *tranſit terra cum onere*, for which cauſe he ſhall not vouch, nor by a warranty expreſſed in the Deed.

Voucher doth not lye in a Writ of Entry in the *Quibus* for the Diſſeiſor, nor in a Writ of Entry in the nature of an Aſſiſe, 11 *R*: 2. and 12 *R.* 2. *Voucher* 82.

In Attaint, the Feoffee Tenant cannot vouch, for no mean time adjudged, yet it was upon a Writ, in which voucher did lye. *Fitz.* That he vouched one named in the Writ who had pleaded Non-tenure, 10 *E*: 3. 21.

In *Ceſſavit* in the *Poſt*, the Tenant was received to vouch, yet the vouchee cannot defend the Tenancy, nor render the Arrearages, nor find ſureties, 14 *E.* 2.

Dum fuit infra ætatem in primo gradu, the Tenant was ſuffered for to vouch, becauſe he is not in by wrong, yet it is contrary to the Writ, 35 *E*: 3.

Leaſe for life of twenty ſhillings rent, a woman recovered the ſame in Dower by default, he brought a *Quod ei deforceat*, and vouched according to the Statute and recovered by default. The woman brought a *Quod ei deforceat*, the Tenant vouched and good, yet the Statute gives it to the Demandant, but now he is in the ſame caſe as he was, when he himſelf brought the *Quod ei deforceat*, ſo he ſhall vouch before Title made, and the woman now Demandant, not, 31 *E.* 1.

See 9 *E*: 3. 22. *voucher* 16. That the Plaintiff in a *Quod ei deforceat* did vouch without ſhewing cauſe, and that it is no Counterplea to diſprove the Title of the Vouchee, as his Releaſe after the Recovery. And alſo when the Vouchee appears, the Recoveror ſhall not plead the Releaſe, but it behoves him alwaies to maintain the Title of the firſt Recovery, becauſe now he is as Demandant: But at the firſt it was ſaid, that he might have pleaded the Releaſe againſt the Demandant in the *Quod ei deforceat.*

Dower, the Tenant doth vouch the Heir who made default after default, the Demandant confeſſed that he had Aſſets, for which ſhe recovered againſt him, and the Tenant held in peace; the Heir reſtored in Diſceit againſt one, becauſe not ſummoned: The woman ſued a *Scire facias* againſt the Tenant upon the whole matter, he cannot vouch becauſe it is a judiciall Writ: Alſo the Warranty is extinct, becauſe he vouched once,

and had execution, and it was his own fault, becauſe he did not ſee that the Writ was executed,&c. 4 *E.* 336.

No voucher, nor Aide-prayer lieth in a Writ of Intruſion of his own Intruſion, 3 *E.* 2. *Aide* 162. 2 *E.* 3. *Voucher* 49. And there it is ſaid, that in Dower, nor in Mortdanceſter the Abator ſhall not vouch, although that the Statute had never been made.

VI. *Where one ſhall vouch twice for the ſame Land, and recover twice in value.*

A Man who hath ten pound rent out of the land of a ſtranger, doth releaſe all his right,&c. and binds him to warrant the land, and the rent denied, his wife brings Dower of the rent, the Tenant may well vouch and recover in value, and if he be impleaded of the land, he ſhall alſo vouch by the ſame Warranty, and ſhall recover in value for that alſo, 45 *E.* 3. *Voucher* 72. So ſee Voucher upon a Releaſe which went only by way of Extinguiſhment.

One hath execution of lands in value whereof the Vouchee was ſeiſed by diſſeiſin made to *I.S.* now if *I.S.* recover that land, the Tenant ſhall recover in value *de novo*. But it was ſaid, that the Vouchee might maintain the Title, and that *I. S.* did recover by wrong. Alſo it was ſaid there, that he who recovereth in value leſſe then he loſt, that the other ſhall not have more upon his ſuggeſtion, after that he hath now more,&c. he ſhall have a new extent,&c. 30 *E.* 1. *Voucher* 297. But ſee, 17 *E.* 3. 12. That acceptance of any land in value, ſhall conclude the party.

Where the Heir of the Vouchee hath Aſſets in Dower, the Demandant ſhall recover againſt him, and the Tenant ſhall hold the land in peace; And if the ſame land be evicted from him by the Heir it ſelf, who loſt in the Writ by default, where he was not ſummoned: The woman ſhall have a *Scire facias* againſt the Tenant,&c. and he is without remedy, becauſe he had the effect of the Warranty, and the avoiding of it his default, 4 *E.* 3. 36. *Scire facis* 140.

VII. *Where the Queen ſhall be vouched.*

IN Dower, the heire being Vouchee in the Wardſhip of divers, and part not the lands in the Wardſhip of the Queen, the plea ſhall ſtay till he ſue to the Queen, 21 *E.* 3. 53. So 14 *E.* 3. Voucher, the Demandant was put to ſue to the Queen who had parcell of the land of the Ward Vouchee. Alſo the Demandant could not aver that the Queen had not any of the land, for it is all one as an Aide-prayer of the King himſelf, becauſe it is

as

as his Poſſeſſion. But 5 *E.* 3. 60. and 22 *E.* 3. 3. Proces was made alſo againſt the Queen in ſuch caſe, and *Alias*, and then Proces to ſummon him in the land which he had in Ward the day of the Voucher, upon averment of Aſſets.

And ſee 17 E. 3. 65. That the heir ſhall vouch in the Ward of the King, Queen, and others, and Proces ſhall be againſt them all, but the King & *interim ſequend.* againſt him, ſee 19 *H.* 6. 6.

VIII. *VVhere the Lord and Villain ſhall vouch.*

A Writ againſt the Lord and Villain, the Lord may well vouch *Cum villano ab ominbeneficio libertatis excluſo*, but generall Voucher ſhall be an Enfranchiſement: And this is to be underſtood of the Purchaſe of the Villain, and when they are both named in the Writ, and when the Lord is preſent in Court, 33 *H.* 6. 1. *Voucher* 40.

See *t. E.* 1. *Voucher* 295. Where ſuch a joynt-Voucher was not ſuffered, becauſe they cannot be Joynt-tenants of the purchaſe of one, for which cauſe the Lord did anſwer as Tenant of the Freehold: And the Villain, (the proteſtation made as before) by his ſufferance did vouch the Feoffor, and well, and that was received, 17 *E.* 3. *Aſſ.* 19. agrees, that the Villain alone ſhall have the Voucher in this caſe, and ſo ſaith *Wilby*, 18 E. 3 19. So one ſhall vouch where the Freehold is in another.

IX. *VVhere one ſhall vouch, and ſhew ſeverall bindings.*

A Writ of right of a hundred ſhillings rent, the Tenant vouched 7. and for all but one farthing, bound himſelf by his Demeſne land, and for the farthing to the Reverſion of it, 5 *E.* 3. 67.

Soe 7 *E.* 3. 6. where in Dower in four Towns, the Tenant did vouch the heir within age, and ſhewed the Deed of the Anceſtor in three Towns, except five pence of rent, and for that he bound himſelf by Reverſion, and well; but a Reverſion ſhall not bind an Infant, and the Vouchee ſhal not take advantage of it, that he doth not ſhew the binding according to the voucher, but that is to the Demandant, and in bar as to parcell, as to the vouchee.

X. *Where the Tenant ſhall vouch after he hath pleaded* Non-tenure *in Bar, out of his Fee, to the Aſſiſe.*

Formedon of a Rent, the Tenant ſhall vouch after that he hath pleaded, out of his Fee, becauſe that is no bar, but a demanding if the Tenant be anſwerable without ſhewing a Deed, and that by *Herle*, 3 *E.* 3. 36 *Voucher* 194.

Aſſiſe againſt two, the one pleads to the Aſſiſe, the other in bar, the Plaintiff ſaith, that he who pleads to the Aſſiſe is Tenant, for which he appears and voucheth the other, and well, for the Plaintiff by his plea hath given him the Tenancy, 8 E. 3. 42. The Book is, that he ſhall not vouch, but that the Aſſiſe ſhall be awarded, as if the other had ſaid nothing upon the plea to the Aſſiſe, *vi.* 8. *Aſſ.* 19. he ſhall have the voucher.

Dower *unde nihil habet*, the Tenant ſaith, that ſhe hath recovered ten acres for Dower of one *J.* and not allowed, becauſe a ſtranger: So out of the Statute, for which cauſe he vouched, and well: So alwaies after a Plea to the Writ, 12 E. 3. *Dower* 89.

XI. *Infinite Cautells to delay a man by Voucher, or to bar a man.*

IF a man of full age be vouched as within age, and makes default at the *Venire facias*, for the tryall of his age, no proces ſhall iſſue forth, but Diſtreſſe infinite, and this is the courſe, by *Paſton*, 15 *H.* 6. *Voucher* 34.

But this is when iſſues are returned, for upon a *Nihil* returned, a Petite Cape, and *ſequatur ſub ſuo periculo* ſhall be awarded, 14 E. 3. *Proces* 45. and 45 E. 3. 23.

XII. *Pleas for the Vouchee, or for the Demandant to abate the Voucher.*

Quod ei deforceat by Tenant in Dower, the Heir was vouched as of full age: It is no plea for the Demandant to ſay that he is within age, and demanded Judgment if without Deed, becauſe he is ſuppoſed of age, and he is not vouched in any Ward for which, *&c.* 50 E. 3. 25. *Voucher* 79.

Voucher of two did abate by the death of one returned; if the Tenant will not aver his life, he ſhall be driven to revouch the Survivor, and the Heir of the other, 17 E. 3. 41. *Voucher* 90.

In

In Dower, the heir vouchee, did appear by his Guardian, and upon debate betwixt him and the Tenant, if he be out of Ward the day of the voucher, the Demandant could not presently recover, which he vouched in the same County, 17 E.3.47. *Voucher* 91.

The Demandant may well challenge a Revoucher to be without cause shewed, 30 E.3. *Voucher* 104.

Precipe of twenty acres, the Tenant saith, that he hath but ten acres, and voucheth, and well, and it shall be intended of the entire demand, but if the vouchee extort Warranty of parcell, then the Demandant shall have Seisin of that, not before: But his Challenge by protestations shall be entred now, for the vouchee shall be summoned of the whole *&c. Fitz.* See here, that where one is vouched of twenty acres, and a binding shewed but of one, yet he hath not failed of his voucher, 19 E.3. *Voucher* 123.

XIII. *Pleas to abate Voucher by the Demandant, or Vouchee.*

THe Heir vouched in the Wardship of *B.* in Dower, *B.* may well challenge the Voucher, becaufe there are divers Guardians, *&c.* which are not named, *&c.* 22 *E*:3.1. *Voucher* 132. 8 *E*:3.15.

Precipe against a woman, she may well vouch her self and her husband, although the Action be brought against her as a single woman, because she might be covert afterwards, 25 *E*:3.45. *Voucher* 142.

The Tenant voucheth *A.* who voucheth *B.* and at the Grand Cape against him *B.* appears, and *A.* is esloined, and day given to the Demandant, without mentioning of *B.* yet the Demandant cannot have Seisin upon this discontinuance, although it is said, that he is not to look that proces be well awarded against the vouchee before he enter into the Warranty, 8 *E.*3.7. *Voucher* 155.

The vouchee voucheth over one *H.* the Demandant alledgeth that there are many of the name, for which at his prayer he was driven to give a certain addition to the party, 10 *E.*3.37. *Voucher* 174.

Dower, the Tenant voucheth *J.T.* and *A.* his wife, and three Parceners and recovers the fourth part against *J.T.* and his wife by default, and now in a new Writ by the said woman and her husband, the Tenant doth vouch the three Parceners, and *J.T.* Tenant by the Curtesie. Now the Demandant doth alledge the first Recovery: So in vain to vouch *J.T.* against whom he hath recovered in value for her portion before: yet the voucher stood: See also there that *J.T.* shall render in value for the default of the others, the whole by the first recovery had against him, so he needed not to be vouched again, 26 *E.*3.59. *Voucher* 305.

A man vouched as of full age, where he is within age, appeareth, and prayeth that the plea may stay, the Demandant shall take no advantage of the false voucher, 18 *E.*3. *Voucher* 228.

XIV. *What*

XIV. *What Pleas the Tenant or Vouchee ſhall have after the Voucher over, and where the Voucher ſhall be peremptory.*

THe Tenant for life vouched him in the Remainder, where he had prayed in aide before of the Donor, and was ouſted thereof: And becauſe this voucher is in lieu of Aid-prayer, with which the Demandant ſhall not be twice delayed, the Demandant did recover, 14 *H.*6.25. *Voucher* 31. *Fitz. Quære* a better reaſon. And ſee 15 H.6. where the Demandant did recover, becauſe the Tenant could not vouch him in the Remainder, from whom he had nothing, and to whom he was not Tenant.

Note, where the voucher is over for ſufficient cauſe not ſhewed, &c. ſo as the voucher doth not lye in the caſe, and is ouſted without Counterplea, tryall, or Adjornment, he ſhall be put to anſwer, and ſhall not loſe the land, 14 *E.*3. *Voucher* 180.

Guardian in Fait not ſuffered to vouch his Leſſor in Dower, was put to other anſwer, 8 E.2. *Voucher* 260.

Demurrer upon Counterplea of the voucher is peremptory to the Tenant, but not to the Demandant. So is it of a tryall by verdict. Demurrer upon the binding to Warranty, is peremptory to the Tenant, and to the vouchee, Demurrer upon a voucher, peremptory to the Demandant: As where the Tenant voucheth to ſave the tail of another Eſtate, 7 E. 3. *Voucher* 153.

So where the Demurrer is adjourned to another Term, this is peremptory, which is not where the voucher is to the ſame Term, 11 H 4. 22. 8 H.7.7. where it is ſaid, that the Statute which wills that he be put to another Anſwer, is to be intended before Adjournment, &c. 40 E. 3. 14. *Voucher* 59.

XV. *Pleas after the Voucher is ouſted, and where it is peremptory.*

NOte that after the plea diſcontinued, or miſcontinued after voucher, the Tenant ſhall not vouch a ſtranger, but may well vouch again the ſame perſon, and by the ſame name and Surname, 8 E.3 7. *vi.* 5 H.7. 40. That the Tenant may waive voucher at all times before, that the vouchee is ſummoned, and plead in bar, but not after the vouchee ſummoned, 14 H.6,7. agrees.

The plea is ſtayed for the Nonage of the ſecond vouchee, and at ſpeciall Reſummons againſt the Tenant and the firſt vouchee, the Tenant may well plead a Recovery of a ſtranger after the laſt continuance, and every plea in bar which is of puiſne time, as a Releaſe, &c. So the vouchee, who

alſo

alſo may plead the death of the Tenant, that the Demandant hath taken a husband, *&c.* Outlawry, Excommengement: So the pleas be of later time. But *Brian* ſaith, that the Termor ſhall not plead to the Writ, but in bar, 5 *H.*7.4. *Voucher* 45.

Uouchee pleaded that the Demandant had another Writ depending, if it be purchaſed after the entry into the Warranty, it is a good plea, otherwiſe not, by *Finchden*, 41 E:3.11.

After voucher in a Mortdanceſter, the Tenant may well waive it, and plead to the point of the Writ, 31 *E.*3. *Mortdanceſter* 48.

If the Demandant Counterplead the cauſe of voucher, the Tenant may waive that voucher, and vouch at large, 17 *E.*3.46. *Counterplea of Voucher* 41.

If the Demandant be at iſſue with the Tenant upon Counterplea of voucher, he may waive it, and ſay, that the voucher ſhall ſtand, for that ſhall be the Award againſt him, 4 E.3.56. *Counterplea* 66.

But if the Tenant ſhew cauſe of voucher to the vouchee, he ſhall not waive it, and ſhew other cauſe, 11 E.2. *Voucher* 261.

XVI. *Where the Tenant ſhall plead before the Voucher, upon paine of loſing the Warranty, and where not.*

DOwer of the Moyety &c. The vouchee ſhall not compell the woman to ſhew cauſe of ſuch Demand, for that belongs to the Tenant, 10 *E.*3.35. *Voucher* 173. But ſee 13 E.3. *Voucher* 29. where ſhe was driven to ſhew cauſe of ſuch demand to the vouchee, *Voucher* 10.

If the Demandant hath Judgment to recover, and the Tenant over againſt the vouchee, if the Demandant doth not ſue execution, but bring a new Originall, the Tenant may vouch again, but if there be default in the Tenant, as that he ſue not ſo ſoon againſt the vouchee, as if he ſue but at the *ſequatur*, but not that Proces now, although the Demandant ſue not Execution, but a new Originall, the Tenant ſhall not revouch, becauſe he hath loſt the Warranty by his default, and ſhall not have more advantage, then if the Demandant had ſued execution of the firſt Judgment, where no Judgment ſhould be for the Tenant: But if he were not Tenant of the land at the time of ſuch voucher: It was ſaid, that ſuch default of ſuing ſhould not hurt him in a new originall now againſt him as Tenant, 10 E:3.21 *Counterplea de garr.* 14.

Uoucher of two acres maintained by a Deed of two Sellions, which make but one acre, with ſpeciall entry, 9 E. 3. 39. *Counterplea de garr.* 13.

He who hath but as Joynt-tenant with his Wife, whether he be Tenant or Uouchee, ſhall not vouch alone the Feoffor, *&c.* becauſe he cannot recover according to the firſt Eſtate, and in the firſt caſe, he might abate

abate the Writ. Alſo where he is Vouchee, he may be helped by ſpeciall pleading, 10 *E.*3.52. *Counterplea de garr.* 15.38 *E:*3.*acc.*

See 44 *E:*3.31. *Entry* 52. and 36 *E.*6. *Entry* 48. Where in a Writ, ſuppoſing the Entry by two, it is no plea that he entred by one, becauſe he may vouch him: But where the entry is ſuppoſed by one, if he enter by him and another, that ſhall be ſhewed, otherwiſe he ſhall not vouch, 48 *E.*3.29.

Precipe of Land in four Townes, where the whole is in three, the fourth being a Hamlet of them, if the Tenant vouch generally, the Vouchee ſhall abate it. So where Tenants in Common voucheth joyntly, or Joynt-tenants ſeverally, but that ſhall be before entry into the Warranty, 22 H.6.6.22 *E.*3.8. *Voucher* 137.5 *E.*2. *Voucher* 251.

XVII. *Where the Tenant ſhall plead to the Writ upon pain to loſe the Warranty.*

Precipe of a houſe and ſix acres of land, the Tenant voucheth, and for cauſe ſheweth to the Vouchee a Deed of the houſe, *Cum pertinentiis*; And it was holden, that that doth not maintain the Voucher, but for the houſe, 4 *E.*2. *Voucher* 244.

The Vouchee ſhall not plead to the form of the Writ, 5 *E.* 2. *Voucher* 150. He ſhall plead Meſnoſmer of the Demandant, 7 *E:* 2. *Voucher* 159. Or that the Demandant hath not made him heir to him who was laſt ſeiſed, 6 *E.*3.49. but he ſhall not traverſe the Entry, *&c:* 6 *E:* 3.47. The Vouchee cannot plead the death of one of the Tenants, 29 *E:* 3.62. *voucher* 312. And of theſe matters peremptory, See 22 *E:*3.1 and 22 H. 6.12.

XVIII. Pleas for the Vouchee to the Demandant:

THe Vouchee ſhall plead a Releaſe to him, or to another whoſe Eſtate he hath, and all matters of force, ſee peremptory, and pleas before Voucher, 5 *H:*7.40. 22 *H.*6.12. 10 *E:*3.55. Where he pleaded to the Action in a Writ of *Formedon.* 7 *E:*3.9.

The Guardian of an Infant Vouchee ſhall plead every plea, 46 E: 3.20. *voucher* 74. And ſhall ſay, that the Demandant in Dower hath eſſoined the Heir, 17 E:3.58. and 8 *E:*3.71.

The Vouchee ſhall alledge Nonage of the Demandant, pray that the plea may ſtay, 3 E:2. *age* 133.

Upon a *Cui in vita* of the Seiſin of *H.* his Mother, the Vouchee may well ſay, that his Mother is named *M.* yet the Tenant ſhall not have that plea

plea after the View, 44 E:3. *Eſtoppell* 8. nor the Vouchee ſhall not have it after the View, &c. 15 E:3. *Eſtoppell* 238.

The Heir vouched in the Ward of *A.* now *A.* ſhall not ſay, after the entry into the Warranty, that he hath nothing in the Guardianſhip, becauſe he entred as Guardian, 18 E:2. *Eſtoppell* 268.

The vouchee ſhall not challenge the form of the Writ, 3 H.4:13.

The Vouchee may plead a Recovery of a ſtranger, 41 E:3.11.

A man brings a *Præcipe* againſt *A.* and another of the ſame land againſt *B.* who voucheth *A.* who pleaded this matter, and was not allowed, becauſe the Tenant had affirmed it, 46 *E*:3.33. So the death of the Tenant or Demandant, 30 E:3.

And variance betwixt the Originall and the *Pone*, upon a removing of the plea out of the County. And the omiſſion of one of the blood in right, and a Conveyance made by a Baſtard, *&c.* may be challenged by the Vouchee, *t.E.* 1. *Brief* 861. The caſe was, *Præcipe quod reddat tertiam partem Piſcariæ in aqua, &c.* the Vouchee challenged it for incertainty, whether he demanded the Fiſhing, or the Soil, at the laſt he ſaid he demanded the Demeſne.

The Vouchee may alledge that the Tenant had nothing at the day of the Writ brought, or of the Voucher, 9 E: 3.

And the Vouchee ſhall have the ſight and hearing of all the Deeds upon the Demands declaring againſt him, 7 E:3. 6.

And the Vouchee may ſay, that the Demandant hath made the ſame Anceſtor in one Deed to bind him to the Warranty, Grandfather, and in another Deed Coſin, and for that the Writ ſhall abate, 13 E:3. *Joynder in action* 29.

XIX. *Voucher in Aſſiſe of Novel Diſſeiſin.*

ASſiſe againſt two, one taketh upon him the whole, and voucheth the other, who preſent in Court, entreth into the Warranty, 13 *E*: 3. *voucher* 19.

Aſſiſe againſt husband and wife, and others, ſhe being received upon the default of her husband, voucheth one of the other, who being ready entreth into thew arranty, and good, becauſe he is named in the writ, although he be out of Court by his default, 133 E:3. *voucher* 117. and 119. The Husband vouched in ſuch caſe after he had not default, and ſhe received.

Aſſiſe againſt two, one pleads to the Aſſiſe for the third part, the other pleads a Recovery in Bar, the Plaintiff choſe the firſt for Tenant of the whole, who vouched the other, and good, 8 E: 3.42.8. *Aſſ*:19.

Husband and wife plead Joynt-tenancy by Deed, and afterwards ſhe being received upon the default of the husband, vouched the husband, and good, 25 *Aſſ*:14. *voucher* 204.

Aſſiſe of a Rent, the Tenant vouched his Feoffor *&c.* not named in the Aſſiſe, and the Demandant did counterplead it by the Statute, 26 *H.*6. *Counterplea of Voucher* 6.

If one named in the Aſsiſe, and preſent, be vouched, and will not willingly enter in the warranty, he ſhall never be compelled to it in an aſsiſe, 20 *E.*2. *Gar.*84.

See 18 E.2. *Damages* 14. & 17 E. 2. *Error* 90. where in an Aſsiſe the Tenant did recover in value againſt the diſſeiſee, who by an agreement did warrant the Land unto him.

XX. *Where voucher ſhall be without ſhewing a Deed, where not.*

IN Dower, the Tenant ſhall not vouch the heir of the husband within age, without ſhewing a Deed, otherwiſe if he vouch him as of full age, 13 *E.*3. *voucher* 13. 50 *E.*3. 25. *vide* 48 *E.*3. 5.

The Tenant did vouch two brothers, one heir at the Common Law, the other heir by Cuſtome, and both within age, and ſhewed ſpeciall cauſe, 15 *E.*3. *voucher* 22.

A woman received by the default of her husband in a Formedon vouched the husband, as aſsignee of the Conuſee of the husband by Fine, without ſhewing any thing, yet *Stbard* ſaid, that the aſsignee ſhall ſhew both the deeds, 13 *E.*3. *voucher* 27. 8 *E.*3. 61.

A man ſhall not vouch by Releaſe or Confirmation, without ſhewing a Deed, otherwiſe it is, where the Warranty doth begin, by Livery, be the eſtate fee-ſimple, or fee-tail, 11 *H.*4. 21. 40 *E.*3. 22.

A woman upon default of her husband vouched her ſelf and the husband, to ſave the Tail, as aſſignee of the Donee, and the opinion of the Court was, that he ſhall ſhew the Deed of binding to warranty now to the Demandant, for otherwiſe it ſhall never be ſhewed, and it behoves that there appear cauſe to delay the demandant, 10 *H.*7. 22. 11 *H.*4. 7. 16 *H.*7. 13. But ſee that he ſhall not ſhew the Deed upon voucher of himſelf, 40 *E.*3. 14 and 22.

Donee in Tail doth vouch the Donor, who re-voucheth him to ſave his Reverſion, and well, without ſhewing a Deed, becauſe he is another perſon, 16 *H.*7. 13. he ſhall ſhew cauſe.

Finchden ſaith, 40 *E.*3. 23. that the demandant ſhall not have anſwer unto the Deed ſhewed by him who voucheth himſelf to ſave the Tail, ſo it is in vain to ſhew it.

The Tenant cannot vouch an infant as heir in a Formedon without a Deed, if he doth not ſay, that he voucheth him for homage anceſtrell, or exchange, 4 *E.*2. *Voucher* 245.

Herle ſaith, that a man ſhall never vouch as aſſignee, without ſhewing a ſpecialty, 4 *E.*3. *Itin. Derby* Counter-plea of voucher 95. See 14 *H.* 6. 4. See

6.4. See 2 E. 3.29. That the Deed of aſſignment ſhall not be ſhewed to the party demandant.

A man ſhall not vouch as aſſignee of the King, without ſhewing a Deed, 14 E. 3. *Voucher* 108.

XXI. *Where the Tenant ſhall vouch after Aid-prayer, and where he of whom he hath aid.*

NOte, that he, who prayeth in aid, as Leſſee for life, may vouch a ſtranger at another day, notwithſtanding the aid-prayer, if not upon the default of the prayee he be commanded to anſwer alone, 18 E. 3. *Voucher* 7.

But if the prayee appear, the Tenant ſhall not refuſe the joining in aid for the vouching of a ſtranger; for they two may vouch, and upon his default, the Tenant may vouch a ſtranger, as it is ſaid. 9 H. 6. 3. and 4. 22 H. 6. 40.

Two Coparceners make partition, one and her husband being enterpleaded, prayeth in aid of the other, who maketh default, the husband maketh default, ſhe received, voucheth her ſelf, and the other to ſave the Tail, 13 E. 3. *Voucher* 14.

After aid-prayer of the King, which is in the place of voucher, the Tenant ſhall never vouch a ſtranger, 15 E. 3. *Voucher* 21. 9 H. 6. 3. 9 E. 3. 15. *Voucher* 160. 14 E. 3. *Voucher* 108. and 3 E. 3. 15. contrary, there he ſhall have the voucher after a *Procedendo*, and therewith agrees, 15 E. 3. *Voucher* 111.

If the Heir be vouched in the ward of the King, who demiſeth, and the other King ſendeth a Writ to do Right, by that it is intended, that that he remains Guardian, for which cauſe the Tenant could not vouch the Heir, as in the Wardſhip of another, it was in Dower, and it was adjudged, that the woman ſhould recover againſt the heir, if he had &c. and ſhe ſhall not have a writ for the Land, which is in the Kings hands &c. See the Caſe, 1 E. 3. 61

Tenant for life being ouſted of aid of his Leſſor, vouched him in the remainder, and was ouſted of the voucher, becauſe the ſame is but in the place of aid, for voucher doth not lie. Tenant by the courteſie ſhall vouch, yet as it is but aid-prayer, becauſe he ſhall not recover, 14 H. 6. 25.

One parcener ſhall not vouch the other, who comes not in upon aid-prayer, after Partition, becauſe the prayer was alſo in the place of voucher, 15 H. 6. *Voucher* 33. 22 H. 6. 40. But ſee 20 H. 6. 2. and 40 E. 3. 22. where one Parcener upon ſuch default ſhall vouch a ſtranger, or her ſelf, who is Tenant to ſave the Tail, and ſhall have all ſuch vouchers, as her ſiſter ſhall have upon joyning with her, which ſhe ſhould not have without aid-prayer.

The Tenant cannot vouch him in the Reverſion, who makes default upon the aid-prayer aforeſaid. becauſe it ſhall be intended for the ſame cauſe of reverſion, 22 H.6.40. and 7 H.4.15. See agreeing with that, 9 *E.*3. 39. and *P.*18 *E.*3. *Voucher* 7. But ſuch voucher ſhall be received, 11 H. 4. and 32 *E.* 3. *voucher* 99. it is ſaid, that if he in the reverſion be ready to enter into the warranty upon the like voucher, he ſhall be received, but otherwiſe the demandant ſhall not be delayed.

A woman joint-tenant for life with her husband, being impleaded did pray in aid of his heir, and upon default, did vouch him, and was ouſted of the voucher, 4 E.3.39.

Tenant in Dower ſhall not vouch the heir who hath prayed aid; for her Election is determined, 10 E:3:57.

XXII. *In what places the Tenant may pray that the Vouchee be ſummoned, and where he ſhall be ſummoned in* Ireland.

IF the Tenant prayeth, that the vouchee be ſummoned in *Wales*, the voucher ſhall abate, but if in *Wales* and *Eſſex*; the Summons ſhall be altogether in *Eſſex*, ſo of a County Palatine, 18 E.3. *Voucher* 5.

See ſo of *Ireland temp.* E.1: *voucher* 239. and 26 E 3.5: where the vouchee was ſummoned in the County of *Lancaſter* alone, *Voucher* 30:6. See *temp.* E.1. *Voucher* 239: The Tenant prayed, that the vouchee be ſummoned in *Ireland*, and diſallowed, ſo in every Caſe, if not that he vouch for exchange, by *Berry*.

Voucher in *York* and *Durham*, Summons was in *York* for the whole, ſo 13 H:4: *voucher* 39. for Summons in one County ſhall ſerve for all, 36 H.6. *Voucher* 49.

But where two are vouched, and the one in *Durham*, and the other in *Cheſter*, Proceſſe ſhall be alſo awarded to the Prince or his Deputy, becauſe one ſhall not anſwer alone, 49 E.3. the plea ſhall be removed out of *Cheſter* upon the voucher, and ſee 13 E.3. *voucher* 18. that upon the Plea removed from thence upon ſuch forreign voucher, the vouchee ſhall not be ſummoned upon the Grand Cape *ad Valenciam* from thence, before that the extent of the Land in demand be returned into the Common Pleas, out of the Court of *Cheſter*.

Where the Tenant prays to ſummon the vouchee in a forrein County, it is no plea, that the demandant hath aſſets, where the Writ is brought, *Fiſher* contrary, if he ſhould be ſummoned in *Cheſter* &c:32 E:3: *Voucher* 97. and 3 E.3: *Itin. Nottingham*, but there *Herle* held, if he ſhould be ſummoned in two Counties, the Demandant ſhall have the amerciament, as before, if he hath aſſets where the writ is brought, although not to the value, yet the Tenant ſhall recover the reſt in the other Counties, where he was not ſummoned, 4 E.2. *voucher* 248: agrees, becauſe Summons in one County ſhall ſerve for all.

But

But if the Sheriff return *Nihil* in that County, then he ſhall be ſummoned in the others, 3 E.3: *voucher* 198.

And upon the Counterplea of voucher found againſt the Demandant, he ſhall not averre aſſets where the Writ is brought &c. 36 *Aſſ.6. Voucher* 206.

A Writ of Right in ancient Demeſne, the Tenant vouched in *London*, and had a ſpeciall *Superſedeas* out of the Chauncery to thoſe in ancient demeſne to ſurceaſe: The Chancellour ſaid, that this voucher ought not to be ſuffered, becauſe Land at the Common Law ſhall not be rendred in value for Land in ancient Demeſne, 35 E:3:*voucher* 316.

Note, upon *Nihil* returned in the County where the Writ is brought &c: the Summons ſhall be in all the other Counties, and the Demandant ſhall not averre Aſſets in one of them, and where the heir is vouched in the Wardſhip of many, the Summons may be in the ſeverall Counties for each of them.

Recovery in value ſhall be onely in the County where the voucher is, if not of Land deſcended, or purchaſed after the voucher 13 E:3: *Recoverie, value* 3: E:3:*Itin.Not.voucher* 198.

XXIII. *Where a man ſhall be in courſe of Ancient intail by voucher, or brought to have the warranty Paramount, or aid Paramount.*

IF the Father leaſeth to his ſon for life, the Son ſhall have warranty Paramount, for the Fee is executed.

But if my Uncle gives Lands to my Father in Tail, who dieth, and the Unckle dieth, I heir to both of them ſhall vouch my ſelf to ſave the Tail, and then ſhall have the warranty Paramount, not before, becauſethe fee is in ſuſpence 18 *E.*3.52.*voucher* 11. See 41 *E.*3.*voucher* 69.

But ſee 18 *E.*3.6. where the Son Donee of his Father could not vouch himſelf to ſave the Tail: See the difference againſt 25 *E.*3.17. where the Son did vouch himſelf for a Remainder in Tail, by the Father unto him.

A woman was received to vouch her ſelf and her husband to ſave the Franck-marriage, and ouſted; for ſhe in Court ſhall have every voucher, but it was ſaid, that if the anceſtor of the husband had given the Land, ſhe ſhould have had the voucher, 5 *E.*3.40. the voucher granted, 5 *E.*2. *voucher* 252.

Note, the heir Leſſee for life, where the remainder is over, ſhall not vouch himſelf to ſave the eſtates, alſo he ſhall not have the warranty Paramount, yet he did alledge a Fine with warranty to his Father, it was his folly to take the Leaſe, 7 *E.*3.61.

But, note, the iſſue in Tail may well vouch himſelf as aſſignee of the Donor

Donor to ſave the Tail, where there is the ſame remainder, although he hath Fee in Reverſion, 32 *E.*3. *voucher* 96.

See 50 *E.*3.2. Where the Tenant did vouch himſelf, as aſſignee of *R.* Conuſee of his Father, who rendred to the Father for life, and good although there did not appear no warranty in the Fine, 25 *E*:3.17.

One Parcener did vouch her ſelf, and her Siſter, to ſave Tail, the who made default at the aid-prayer, 40 *E.*3.23.

Husband and wife vouch themſelves, and the iſſue of the Siſter of the wife, to ſave the Frank-marriage given by the anceſtor of the wife, 4 *E.* 3. 49. *voucher* 177

The eldeſt Son Feoffee did vouch himſelf and his younger brother, heir by the Cuſtome, and good, but if he re-infeoff the Father, and the youngeſt Son, and to the heirs of the Father, now he ſhall not have ſuch voucher, becauſe he is not in by the Father, and the waraanty is gone, 40 *E.*3. 14. 41 *E.*3.9. See that here he might have the warranty Paramount without that voucher.

If the Feoffor take back in tail, and voucheth the Donor, he ſhall revouch him, otherwiſe, if he take back an eſtate in fee: So if *A.* infeofeth *B.* who infeoffeth *C.* now *C.* ſhall vouch *A.* as aſſignee of *B.* but if he re-infeoff *B.* the firſt warranty is extinct, and alſo his warranty to *C.* and ſhall not be revived by the voucher of *C.* 16 *E.*3. *voucher* 87. 14 *E.*3. *voucher* 106.

The husband Feoffor takes back an eſtate to him and his wife in fee, and leaſeth for life, and being received upon his default, voucheth himſelf to ſave the joint eſtate, as aſſignee of the Feoffor, and he could not be admitted to the voucher, becauſe the wife had nothing, living the Leſſee of the husband, 19 *E*:3: *voucher* 122.

Tenant by the Courteſie enfeoffeth a ſtranger, who enfeoffeth the heir of Tenant by the courteſie, who dieth, the heir impleaded by the heir of the wife voucheth a ſtranger, who doth revouch him, and good, 4 *E*:3: *voucher* 157. 3 E 3.51. See the reaſon, becauſe the Writ doth ſuppoſe the Entry of the vouchee, by the anceſtor of the Tenant.

Leſſee for life hath aid of him in the remainder in Tail, who was iſſue of the Donee, and heir of the Donor, and they vouched him, and well, 29 E.3.37. *voucher* 308.

XXIV. *Where one may vouch as aſſignee, and who ſhall be ſaid Aſſignee.*

THE feoffee of the husband doth re-enfeoff the husband and wife, they impleaded vouch, for the wife is aſſignee, and ſhe ſhall revouch the husband, 32 E:3: *voucher* 95: 17 E.3:47.43 E.3.7.

So two enfeoff one, and he doth re-infeoff one of them who vouch-

eth

eth him, he may well revouch them both, 11 H:4:40. and 20 H.6.2.

See in the firſt Caſe, that the wife being received ſhall vouch the husband as aſſignee, 13 E.3. *voucher*, 17. But there he ought to ſhew warranty as Aſſignees, and how aſſignee, ſo is 10 E.3.41.

But in 14 E.3. *voucher* 109. upon ſuch voucher, the wife was not driven to alledge Seiſin of him who aſſigned, nor to ſhew the warranty as aſſignees, but onely that the Conuſee of the husband, did render the Land &c: 5 E.3.2: *acc*:13: ſhe ſhall have Seiſin of her husband before the Fine *&c.*

The husband alone ſhall not vouch as aſſignee, where the Feoffment was to him and his wife, although ſhe be not party to the ſuit, 19 E:3: Tenant in Tail, where the Remainder is over in fee, with warranty to them, their heirs and aſsigns enfeoff *J. S.* and die, his Executors do deliver the firſt deed to *J. S.* who impleadeth, voucheth the Donor as aſſignee, *Quære*, for the Deed doth not belong to him, alſo the eſtate upon which &c: is ſuſpended, 11 *R*:2: *Detinue* 46: But ſee 46 E:3:4: that ſuch Feoffee ſhall plead the warranty in Bar, but ſhall not vouch, *vide* 7 E. 3:34.

And ſee there, that the aſsignee of the heir of the Donee, where the Warranty is to him, his heirs, and aſsignes, ſhall have alſo advantage of voucher or rebutter, as aſsignee of the Donee himſelf ſhould have, 7 E:3: 35. 6 E:3:38: *&* 55.

Alſo the heir of the aſsignee ſhall have as great advantage of warranty as the aſsignee himſelf ſhould have, 10 E:3:9: 10 E: 2: *Warranty* 85. 13 E:1: *Gar*:93.

But *Schard* ſaith, 10 E:3:9: That the heir of the aſsignee ſhall plead ſuch warranty in Bar, although he ſhall not vouch, *Thorp* agrees, 18 E. 3:29.

The Ter-Tenant ſhall not vouch as Aſsignee of *W*: by Confirmation of the demandant to *W*: *&c*: but ſhall rebut, as a diſſeiſor ſhall rebut, but ſhall not vouch as aſsignee, 10 E:3:41.

A feoffment to two, with warranty to their heirs and aſsignes, the aſſignee of the Survivor or his heir ſhall vouch by it, 14 E:3: *Gar*:33.

But aſsignee of aſsignee could not relie upon the warranty of the plaintiff, in Bar of an Aſsiſe, 24 E:3:10: *Bar*:41.

But if *A*: enfeoff *B*: and he *C*. and takes back an eſtate to him and his wife and dieth, the wife as aſsignee of *C*: may well pretend the warranty againſt *A*: the Book is, that he ſhall not plead it, becauſe they may vouch *C*. and ſo come to the warranty, 25 E.3: in a *Scire facias* againſt the husband and wife, *Gar*:41.

XXV. Where a man ſhall vouch himſelf, and where himſelf and another.

THE Mother gave Land to her daughter and her husband, and to the heirs of the husband, and died, the husband and wife impleaded vouch themſelves for this cauſe, and are received, 5 E.3: *voucher* 252. See 5 *E.*3.40: 21 E: 3: 37: *Counterplea of voucher* 91.

Husband and wife vouch the husband, who enfeoffed a ſtranger, and took back to them, 39 E 3:9: *Counterplea of Voucher* 13.

A: *B*: and *C*: Parceners, *A*: enfeoffeth *B*: of her part, and dieth, now *B*. may well vouch her ſelf, and her ſiſter, as heir of *A*. 17 E. 3.39. *voucher* 1.

A man having two daughters, gave Lands to one, and to her husband in Tail, ſhe received in a *Præcipe*, after aid of her ſiſter vouched her ſelf, her husband and ſiſter, 11 *E.*3. *voucher* 14. 40 *E.*3.22.

But where the husband is heir to the Donor, and hath diſcontinued and taken back, and a *Præcipe* is brought againſt him, he ſhall not vouch himſelf &c. 38 E.3.5 19 E:3: *voucher* 122.

Otherwiſe it is of a woman received for default of the husband. See before *Gar*, & 5.E:3.

A man makes a Leaſe for life, the remainder to his Son, the Leſſee vouched the Son, as heir of the Leſſor, who vouched himſelf to ſave the Tail, yet he ſhall vouch for another eſtate, and it is ſaid there, that although the vouchee had Fee, or if he who vouched him hath Fee, ſo as there was no Reverſion in Tail, yet the voucher to ſave the Tail, ſtood, 5 E.3.24.

If one coparcener alieneth in Fee, and is vouched, now ſhe is brought into a way to have ayd of the other by the warranty paramount not to recover *pro rata*, 8 *R.*2. *Aid* 115. & 29 E.3.37.

Note, where the Tenant voucheth himſelf and another, the Demandant ſhall have no plea to the warranty, becauſe there is another who may, as Donees having the ſame Lands allotted to them again by *Hotchpott*, being impleaded, vouch themſelves and the other ſiſter, where ſhe ought to pray in aid, becauſe in the eſtate of Partition, the demandant ſhall not challenge it, but the other ſiſter, 4 E.3.49. *vide* 6 E. 3:30.

One ſiſter Feoffee may well vouch her ſelf and the ſiſters, 40 E.3.14. 17 E.3.59. and there the *Mulier* being Tenant, vouched himſelf and the Baſtard.

And the eldeſt Son Feoffee ſhall vouch himſelf and his brother, heir by by the Cuſtome, 40 E.3:14.

So one daughter Donee in tail, ſhall vouch her ſelf and her ſiſter, 35 E. 3.9: *voucher* 142.

A woman taketh her Leſſee for life to husband, they are impleaded, the

the husband takes upon him the whole, and voucheth himſelf and his wife, for the ſame cauſe, 32 E: 3: *voucher* 102. So if ſhe had infeoffed him before the Coverture 4 E.2: *voucher* 246.

W. levieth a Fine to *R:* who renders the Land to *W.* for life, the Remainder to *B.* his Son in Tail, the Remainder to the right heirs of *W:* who dieth, *B:* being impleaded, vouched himſelf, as heir of W. and aſſignee of *R:* 32 E.3: *voucher* 96: & 100.

A man ſhall not vouch himſelf to ſave any eſtate, which is not Tail, nor a joint eſtate, not a Remainder, nor the Eſtate of a ſtranger, when he cannot for his own eſtate, 7 E.3.19 E:3: *voucher* 122: 38 E:3: 5.

A Formedon againſt husband and wife, they vouch themſelves, and two other wives, without other cauſe, and it was ſaid, that one Parcener ſhall vouch the other without cauſe, as well as ſhe ſhall pray in aid of her, but this is againſt the opinion of divers, 26 E:3: *voucher* 304.

Two joint-tenants do enfeoff the heir of one of them, and his wife with warranty and die, the heir impleaded ſhall vouch himſelf, and the heir of the other joint-tenant for that cauſe, 29 E.3:59.

XXVI. *Voucher of an Infant in his mothers belly, where a Biſhop, ideot, perſons diſabled.*

DOwer againſt a woman, who claimed to be Guardian of an infant in his mothers belly, the Writ was good, not naming her Guardian, yet ſuch an infant ſhall be vouched, 31 E.1. *Brief* 843.

See that *Gard* 153. of the voucher 41 E:3:11:9 *H:*6: and ſuch a woman with child, ſhall bar the heir apparent of Charters, claiming to the uſe of the infant, 41 E.3:11: *Bar* 207.

The Lord by eſcheat entred, but notwithſtanding ſuch entry, the infant, when born ſhall put him out, 9 *H.*6. & 9 *H.* 7:24.

The Lord ſhall have the Wardſhip, and ſhall be ſaid Guardian of the Land, and of the infant in his mothers belly, *temp-* E:1: *Gard* 153.

One voucheth an infant in his mothers belly (if God ſhall give him birth) if not, that he vouch *A:* heir apparent, but afterwards he vouched *A:* alone, 11 E: 3: *voucher* 13.

Finchden held the voucher next before good, and that Proceſſe ſhall be made againſt the heir apparent, 38 *E.*3: 25: *voucher* 58. But there *Thorp* ſaid, if there be no heir apparent, ſuch an infant ſhall be vouched, and no Proceſſe ſhall be, untill he be born, but 8 *E.* 2: *voucher* 237: contrary to *Thorp*, and that he ſhall not be vouched without the heir apparent, in ſuch form as *Finchden* ſaid, becauſe no proceſſe ſhall be, nor no certainty of Reſummons.

An ideot ſhall be vouched, and the plea ſhall ſtay, but a man attaint or convict, who hath not made his purgation, nor a man outlawed in perſonal action, ſhall not be vouched.

Nor the plea ſhall not be without day by Vouchee, where appears no certain cauſe of Reſummons, and the Law reſpects that which is, not that which may be, 8 E:2. *Itin. Cant. Voucher* 237.

See 38 *E.*3.35. Where the Tenant did vouch *T.* Biſhop elect and confirmed, when the Temporalties were in the Kings hands not reſtored, and the Plea did ſtay untill, *&c.* Note, he did not vouch generall the Biſhop that ſhould be.

A Guardian ſhall not vouch in Dower, becauſe he hath but a Chattell, 2 *E:*2. *Voucher* 211.

XXVII. Where the Tenant who is not Heir, ſhall vouch as Heir at the Common Law, and where he who is not Heir ſhall be vouched as Heir.

THe Tenant vouched her ſelf, her Siſter, and the Iſſue of the third Siſter; It is no Counterplea that the Vouchees are Baſtards, where ſeiſed as Heirs, but it is good where all are Baſtards, and the plea ſhall ſtay for the Nonage of one of them, 17 *E.*3.59.

A Baſtard may well vouch without the right Heir, not the youngeſt Son, 43 *E:*3.3. See of the Baſtard, 5 *H.*7.2. 32 *E:*3. *Voucher* 94.

The Daughter of the eldeſt Son ſhall not be vouched, without the Son of the whole blood, for the Warranty of the Father, 43 *E:* 3. 3. 20 *E.* 3. *Voucher* 129. 38 *E:*3. 32.

Before the Statute a man doth alien parcell of a Mannor deſcended of the part of his Mother, rendring four ſhillings, the Heir of the part of the Father, ſhall have the rent, becauſe parcell of the Mannor, but the Heir of the part of the Mother ſhall be vouched with him, 5 *E:*2. *Avowry* 207. 31 *E:*3. *voucher* 88. Of Voucher of the Heir of the part of the Mother, ſee 7 *E:*3.66.

XXVIII. Where the Tenant ſhall vouch of another thing which is not demanded.

Juris utrum of a Rent, the Tenant ſhall vouch his Feoffor, as of Land diſcharged, 12 *R.*2. *Counterplea of voucher* 34. And ſee there, that it is no Connterplea, that the Feoffor was not ſeiſed, diſcharged.

Entry in the *Poſt*, of Tenements in *B.* the Tenant ſaith, that *R.* ſeiſed enfeoffed *B.* who did enfeoff him of the Mannor of *D.* whereof the Tenements demanded are parcell, and vouched him, and good; and it is a good plea, that they are not parcell, 4 *E:* 3. *Itin. Derby, Counterplea* 95.

Aſſiſe

Aſſiſe of a Rent-charge, the Tenant vouched B. who did enfeoff him of the land diſcharged, 26 *H.8. Counterplea* 61

So in a *Formedon*, 10 *E.*3.20. and ſeiſed of the land, good Counterplea. So in a Writ of Beſail of a Rent, 18 E. 2. *Counterplea* 113.

Secta ad Molendinum in the *debet & ſolet*, the Tenant cannot vouch of Land diſcharged, becauſe it is a Service, 13 *E*:3. *voucher* 116.

See if the Patentee of the King of Land, ſhall have Aid of the King in the place of Voucher, in an Aſſiſe brought of Common in the Land, 25 *Aſſ.* 8. *Aid of the King* 72. See the Book, that the Patent was, *Epiſcopo & ſucceſſoribus*; And the Dean prayed Aid. *Stouff* Juſtice relyed upon it: Alſo the Patent was before the limitation in an Aſſiſe, and therefore challenged: So the better opinion of the Book is, that the Aid did not lye.

XXIX. *Where one may be vouched as Heire, and bound to Warranty for another cauſe, and where he who is vouched for one cauſe, ſhall be bound for another.*

HE who is vouched as Heir may be well bounden by his own Deed, if he be not vouched as within age, *&c* So where upon the death of his Vouchee, his Heir is vouched, for in theſe caſes, the word (*Heire*) is materiall, for in the firſt Baſtardy is Counterplea, and in the laſt he ſhall not vouch him who is not Heir, 22 E:4. *voucher* 43. 16. *H.* 7. 13.

And he who is vouched generally ſhall be bound by his own Deed, and by the Deed of his Anceſtor, 10 *H:*7.22.

If the Heir be vouched within age in Dower, and a Deed be ſhewed, yet he ſhall be bound by another Deed, for that was ſhewed only to the Court, and the Plea is not to ſtay in that Action. So he that voucheth by ſeverall Deeds ſhall be bound by one, or by the Reverſion, 7 E:3.6. 48 E. 3.34: 8 H 7.7. 11 H 4.20.

But he who is driven for to ſhew cauſe of the binding to the Demandant, ſhall not bind the Vouchee for another cauſe, 11 H: 4.21. 31 E: 3. *Counterplea of voucher* 88. 17 E:2. *Counter.* 111. 7 E:3.54.

XXX. *Where one ſhall be vouched in the cuſtody of the Demandant.*

IN Dower, the Heir of the husband was vouched in the cuſtody of the Demandant alone, and good, and he was not put to Rebutt, becauſe the Guardian cannot endow her ſelf, if not by the Award of the Court: Alſo it is no Rebutter, becauſe it may be that the Heir hath not any thing but in tail, which ſhall be declared upon the Voucher, 16 E: 3. *voucher* 88. And ſuch Voucher admitted good, 10 E: 3. 26. the Demandant ſummoned to anſwer himſelf.

The Heir was vouched in the Wardſhip of the Demandant in Dower, and of another, to whom the Father deviſed land, untill the age of the Heir, and holden a good cauſe of Voucher, 27 E:3.3.

See 7 *R.* 2. *Dower* 149. 22 E: 3. 3. where the Heir Demandant upon Voucher did preſently demand, what the Tenant had to bind him to Warranty, &c. And he ſhewed cauſe of Warranty by Exchange: And the Defendant ſaid, ſhe had nothing in the Wardſhip, upon which they were at iſſue, and ſhe recovered her Dower preſently, yet ſhe her ſelf was party to the Iſſue.

XXXI. *When one ſhall be vouched in the Wardſhip of the King, with others.*

WHere the Heir was vouched in the Wardſhip of the King, and others; The Demandant did aver that the King had nothing in the Wardſhip, and the Tenant was driven to anſwer to it: For *Hill* ſaid, that if it be true, the Voucher ſhould not ſtand againſt the others, but that he ſhould loſe that portion of the land for which he had vouched, *Quære* 21 E:3.53. and 105.

And ſee in that Book, that the Plea ſhall ſtay untill the King be adviſed, 1 E:3.13. not in Dower, but 2 H.4. it it agreed by the Juſtices, that he ſhall not have the Voucher of the others, after the *Procedendo*, becauſe where the King is Guardian, it ſhall be intended Guardian of the whole land, and from the King the Heir ſhall ſue his Livery, *&c.* But ſee the contrary to that, 17 E:3. 65. 21 E:3.53. 26 E:3.6.

Where an Infant is vouched in the ward of the King, if after *Procedendo* proces be awarded againſt the Infant, where the King hath granted the Wardſhip over before, the ſame is not good, for it ought to be againſt the Guardian who may loſe, and ſo the Infant ſhall have remedy by Mortdanceſtor, if he loſe the land without cauſe, 46 E:3.20.

Alſo the Infant (where the King hath granted the Wardſhip over) ſhall be vouched in the Wardſhip of the Grantee, not of the King, 1 E. 3.13.

And where he hath parcell of the lands in his own hands which is holden in Socage, the proces ſhall be againſt the Guardian, and alſo againſt himſelf, 47 E.3.18.

The Infant ſhall be vouched in the Wardſhip of the Grantee of the King, and he ſhall pray in Aid of the King, 48 *E.* 3.5. 1 *E.*3.13. but ſee 46 *E*:3.20. That Proces ſhall be made againſt the Grantee of the King, after *Procedendo* upon a Voucher of the Heir in the Ward of the King: But *Quære* if it be a Counterplea for the Demandant to ſay, that the King hath granted the Wardſhip over, where the Heir is vouched in his Wardſhip, 3 *H.*6.17. *Voucher* 28.

Note where the Infant is vouched in the Wardſhip of the King in Dower,

er, the Tenant cannot alledge upon the *Procedendo*, that he hath a Warranty over, and ſo ſhall loſe the anſwer which his Guardian might well have, if he were vouched in the Wardſhip of a common perſon, 5 *E.*3.4. But *ex aſſenſu partium*, day was given to the Infant to appear, and to ſue to the King.

Three Parceners Vouches, two in the Wardſhip of the King, one of full age, and the other dead, her husband Tenant by the Curteſie, yet he had rendred in value before for his proportion, 26 *E*:3.5.

XXXII. *Where a man ſhall be vouched in the Ward of divers Stranger perſons to the Writ, whereof the Queen.*

IN Dower, the Tenant did vouch two Sons, (*s*) the eldeſt, whoſe body was in the Wardſhip of *T.* Guardian in Fact, and part of the lands in the Wardſhip of the Demandant for Nurture, and *p.* in the Wardſhip of *S.* Guardian in Knights-ſervice, and the youngeſt in the Wardſhip of the Demandant for Nurture, for Land Borough Engliſh, 15 *E.* 3. *Voucher* 22.

The Heir was vouched as of full age for parcell, and for part of his Land in the Wardſhip of *T.* and other part in the Wardſhip of *S.* 48 *E.*3. 5. for an Infant ſhall be vouched as of full age, for the land not in Ward, for it is no plea to ſay, that he is within age, if he do not further ſay, and in Ward, and the proces ſhall be well made againſt himſelf: for where the Infant is vouched in Dower, or in Wardſhip for a Socage Tenure, the Voucher and Proces ſhall be alwaies againſt himſelf, as of full age, 50 E:3.25. 33 *E.*3.31.25 *E*:3.16.

See 17 *E*:3.59. The Heir vouched in the Wardſhip of the King, Queen, and others in Dower, and 14 *E*:3. *Voucher* 110. The Heir vouched in the Ward of the Queen and others; And if one of the Guardians dieth, the Voucher ſhall abate, and the Tenant ſhall revouch in the Wardſhip of the others, and the Executors of him that is dead, 22 *E*: 3.3. Where one was returned dead at the *Sequatur*, and the Proces not ſerved againſt the others, the Demandant could not have Seiſin, but Revoucher was awarded, *H.* 5 *E.*3 *Voucher* 179. The Heir vouched in the wardſhip of *H.* Prior, and others; at the *Sequatur*, the Prior was returned dead, the Tenant was ſuffered to revouch the Heir, *&c.* which he ſhould not have done, if the Prior had been named by his proper name of Baptiſme. And 5 E: 3. 6. One Guardian was returned dead, yet the other ſhall anſwer for his part, 48 E: 3. 5. 5 E: 3. the Voucher againſt Executors of the dead, and others.

The Infant vouched in ward was returned dead at the *Sequatur*, and the guardian did not appear, yet the Demandant could not have ſeiſin; for now he is not guardian of the Infant, but the voucher ended, 22 *E.*5:20.

Where

Where the heir hath land holden in Knights ſervice & alſo land holden in ſocage, if the guardian in ſocage, or the heir himſelf be not vouched with the Guardian in Knights ſervice, the Voucher ſhall abate, for no Land in Knights ſervice ſhall be rendred in value, if he hath ſufficient holden in Socage: Alſo voucher ſhall abate by omiſſion of any of the Guardians in Knights ſervice, for the equality of the loſs, alſo if they be all named, yet the Voucher is not good by the leaving out of the Guardian in ſocage in Dower, 25 *E.*3.16. 27 *E.*3.3.

Voucher of the heir in the wardſhip of diverſe, where one hath nothing in the Wardſhip, ſhall not hurt; but upon the matter averred, when he makes default, the other ſhall anſwer, although he hath the Wardſhip of the body, and none of the Land; but the leaving out of one who hath any thing in the land ſhall abate the whole Voucher, by *Herle*, 8 *E.*3.15. 31 *E.*1. *Voucher*, 284.

See 7 E.3.3. That he who hath nothing but the body in wardſhip ſhall be vouched, and ſhall plead in bar, be he guardian in right or in fact, but where the Guardian in fact doth appear, and the other not, proceſs ſhalbe continued againſt him, and the other ſhall anſwer alone.

The Guardian pleaded, that the heir had but tail upon a voucher, 8 *Edw.* 3 63.

The heir vouched in the wardſhip of the Aſſignee who had but at will, becauſe the poſſeſſion was in the King, 4 *E.* 2.

If the Guardian plead that the demandant hath accepted parcell in the ſame Town, it is a good plea to the Writ, 5 *E.*3.196. *vi.*18 E. 2. *voucher* 231.

The wife of the Tenant brought Dower againſt the Feoffee of her husband, he ſhall not vouch the Lord paramount, who hath the Wardſhip of the heir for cauſe of wardſhip of the meſne, but ſhall vouch the Meſne in ward, as Guardian, 4 *Edw.* 2 247.

Where there are two Joynt Lords, of neceſſity both muſt be vouched, but the husband alone may be vouched where he hath nothing but in the right of his wife, 30 E.1. 299. 30 E.1. *voucher* 284.

XXXIII. *Where the vouchee may enter into the Warranty* Gratis, *without proceſs, and where he may counterplead the binding although he enter* Gratis *into the Warranty.*

ONe was vouched as within age, and at iſſue of what age he was, and he appeared upon proceſs to be inſpected, and adjudged of full age, now it is in his election if he will enter into the warranty without proceſs, 15 *H.* 6. *voucher* 34. and 45 E.3. 23. but ſee 13 E.3. *voucher* 178. where the vouchee was not ſuffered to enter into the warranty untill he was of age.

The

The husband and wife vouchees, the wife entred into the Warranty *gratis*, upon the default of the husband, 38 E.3 11.

Where two are vouched joyntly, the one ſhall not enter into the warranty without the other, untill proceſs be ended againſt him, and then he may enter *Gratis, per Idem dies*, otherwiſe it is of a ſeverall voucher, and where the heir is vouched in the wardſhip of many, for that is as a ſeverall voucher, 48 E:3. 5.

If Leſſee for life prayeth in aid of him in the Reverſion, who appeareth, but will not joyn with him, for which the Leſſee voucheth him, and he enters into the warranty *Gratis*, and was received, 32 *Edw.3. voucher* 99.

A voucher counterpleaded, was granted at another day, but the Vouchee was not ſufferrd to enter into the Warranty *Gratis*, becauſe it was nor at the firſt day. 29 E. 3. *voucher* 121.

The plea was ſent into the Common pleas for a forrain voucher in *L.* and the vouchee could not enter *Gratis* into the warranty at the firſt day in the Common pleas, becauſe that was not the firſt day, 22 E.3.3.

The Heir of the husband vouched in Dower, received to enter into the Warranty *Gratis*, where the Sheriff had returned that he had nothing &c. and rendred Dower, 20 E.3: *voucher* 126.

At the *Sequatur*, &c. although that the Writ was not returned, the vouchee may well enter into the Warranty *Gratis*, and that by Attorney, 22 E.3 4. and 7. 2 E.3.13. 13 E.3. *voucher* 74 3 E.3. *Itin Not. voucher* 200 where at the Summons returned, the husband, wife, and ſon of the wife, vouchees, did enter into the warranty by their Attorney *Gratis*, and vouched over.

So he may enter into the Warranty *gratis*, although the Writ be not returned 5 E 3. *Itin Bedford* 197.

In Aſſiſe the vouchee alwayes enters into warranty *gratis*, for no proceſs ſhall be againſt him, 3 E.3. *voucher* 199. 26 *Aſſ.* 20. and that ſhall be alwayes at the firſt day, not after, 20 E:3: *Gar*:84. 4 E:3. *Counterplea of warranty* 8. 18 E.3. *voucher* 230.

The firſt proceſs was not executed nor returned, the ſecond was returned *Tarde*, then the Tenant had proceſs at his perill, and upon that *Nihil* being returned, the Vouchee would not enter into the Warranty *gratis*, but the Demandant recovered preſently, and not the Tenant over, 19 E.2. *voucher*, 234.

See 5 Ed 2. *voucher* 256. At the firſt proceſs, the vonchee may well enter *gratis* into the Warranty, but upon the other proceſs not executed, and a *Tarde*, or *Nihil* returned, he ſhall not enter into the Warranty untill at the *Sequatur*, 48 *E.*3.1.

XXXIV. *Where one ſhall not vouch without cauſe of her voucher, and what cauſe ſhall be ſufficient, and where it is not materiall.*

Juris utrum againſt a woman, ſhe ſaid, that ſhe had but for life, the Reverſion to the two heirs of her husband in Gavelkind, and vouched them, and good, without cauſe; where they were ſons of the husband, yet ſhe ſhould not have vouched the husband without cauſe ſhewed, 18 *E*:3.*voucher*. 2. becauſe the husband is party to the Writ; 13 *E*.3.*voucher* 17. and 119. 31 *E*.3.*voucher* 25. where ſhee was received upon the default of the husband, 14 *E*.3.*voucher* 109. 5 *E*.3.174.

He who voucheth himſelf to ſave the taile, ſhall ſhew cauſe, 18 *E*.3.6. and 52. 40 *E*.3.2.

One parcener after Aid prayer of her ſiſter, vouched her ſelfe and her ſiſter to ſave the tail, and ſhewed cauſe, 11 *E*.3.*voucher* 41. 14 *E*.3.32.& 41 *E*.3.*voucher* 69. 50 *E*.3.2. *and* 32 *E*.3.*voucher* 96. and 100. So where he voucheth himſelf to have a joynt eſtate, as Aſſignee, 19 *E*:3.*voucher* 122. 25 *E*.3.*voucher* 144. *and* 7 *E*:3:61:*voucher* 153.

One parcener may vouch another after cauſe ſhewed, for he may have a warranty from her, as by Releaſe, ſo ſuch voucher doth import a good cauſe by Common intendment, 18 *E*.3.*voucher* 6.

Tenant by Receit, vouched the Leſſee for life, and was driven to ſhew cauſe, 18 E:3:30.

See 31 E.3.*voucher* 26. contrary in that caſe, but there it was ſaid, if the Leſſee had vouched him in the Reverſion, he ſhall not revouch him ſans cauſe.

In a *Quod ei deforceat*, the plaintiff may well vouch without cauſe, and it is no Counterplea to diſprove the title of the vouchee in Reverſion, as that he hath releaſed after the Recovery, 9 E 3.22.

In a Writ of Ward, the Tenant ſhall not vouch without cauſe, becauſe but a chattell, 9 E.3.61. But hee need not ſhew the Deed of the grant, &c. 46 E:3:25: 25 E.3.3. See 12 *R*.2. *Counterplea of voucher* 35. good matter, , and it is not materiall if the Deed hath not warranty, 31 E.3.*voucher* 24: 12 E.3.*voucher* 27; 30 E.3.6. a good caſe, and there the vouchee could not have advantage of it, that the Deed did not comprehend the warranty.

In Dower, an infant ſhall not be vouched without cauſe, and that ſhall be without a Deed of the Anceſtor ſhewed, 31 E:3.*voucher* 24. 19 E. 2. *voucher* 223: 50 E 3.25.

One parcener prayed in ayd of another, and upon her Default vouched a ſtranger, who vouched that parcener who did not appear, & did not ſhew cauſe. *Fortef.* Where the Demandant cannot have the ordinary counterplea, it behooveth that he ſhew cauſe, as if one Demandant is ſevered, and

and the Tenant voucheth him, or the vouc hee vouch over, and he vouch the Tenant, 20 *H.*6.2.

Precipe againſt four, where two vouch, the other two ought to ſhew cauſe, by the opinion, 31 *H.*6. *voucher* 48. 26 E.3. *voucher* 304. and ſo alwayes when a party to the Writ is vouched, See 12 *H.*4.20. 43 E.3.7. 18 E.3.51.

And the cauſe is traverſable, 11 *H.*4.19.8.E.3.61. *and* 13 E.3.40 E.3.14. *&* 23.

But if one Tenant makes default after default, and now taking the entierty upon him, he may vouch without ſhewing cauſe, 11 *H.*4.19.8.E.3.8. ſo where one diſclaimes, and the other takes upon him the entierty, 8 E.3.7.. *and* 21 E.3:33. ſo where the Writ is againſt two by ſeverall *Precipes*, 5 E.3.7

But a woman received for the Default of her husband, and ſhall not vouch him without cauſe, 43 E.3.7.

If the eldeſt brother vouch himſelf and his youngeſt brother, *&c.* or his Co-heir in Gavelkind, he ſhall ſhew cauſe, 40 E.3. 22 E.3.10. 12 E*d.*3. *voucher* 113. So where he voucheth himſelf and a ſtranger, 27 E*dw.*3. *voucher* 146. 26 E.3.304 29 E*d.* 3.310.

In a *Precipe* againſt two, they ſhall not vouch ſeverally without cauſe ſhewed, 42 E.3.12 H.7.2.

A woman received upon Default of her husband, vouched a ſtranger, he ſhall not vouch the husband without cauſe, no more then the Wife her ſelf, no more then he ſhould be, if the husband and wife had been firſt vouched, 43 E.3.44, 2 E.2: *voucher* 146.

He who voucheth two heirs of one for the poſſeſſion, the other as heir at the Common Law, he ought to ſhew cauſe, 43 E.3.5 E.3. *Voucher*, 183.

Where the vouchee doth revouch the Tenant, or any who hath vouched him before, he ought to ſhew cauſe for that 44 E.3.16. 16 E.3. *voucher* 87. 17 *E.*3.32 *E* 3 95. 7 E.3. 4 E:2. 146.

Precipe againſt husband and wife, he diſclaimed for his wife, and after vouched him, ſhe was driven to ſhew cauſe for the eſtate made for the coverture, 32 E.3. *voucher* 102.

A woman Receiver ſhall vouch her ſelf and her husband without cauſe 3 E.3.4.201. 5 E:3. 181.15 *Aſſ.* 204.

The husband ſhall not vouch himſelfe and his wife without cauſe. 4 E.3.2.

The Tenant vouched the husband and wife without cauſe, 25 E.3. *voucher* 141.

In eſcheat, The Tenant vouched himſelf his wife, and another woman as heirs of *T.* and had the voucher without cauſe, 18 E 2: *voucher* 229. 26 *E.*3.304. and 29 E.3.3. *voucher* 300. who were vouched as heirs.

A *Precipe* againſt husband, wife, and a third perſon, the husband and wife diſclaimed, the third vouched them without cauſe ſhewed, 29 E*dw.* 3.210.

Precipe againſt *B*: and others, the others vouch *B.* who being preſent entred into the warranty, and no cauſe ſhewed, the writ was by ſeverall Præcipes, 18 *E*:3.*voucher* 280.

The Prayee in Aid cannot vouch himſelf, and another without cauſe ſhewed, 29 *E*:3.*voucher* 308. 26 E:3.304. 29 E.3.310.

XXXV. *What ſhall be ſaid a good Cauſe, and what a good Counterplea to the Cauſe, what not, what to binding.*

THe Iſſue in tail ſhall not vouch himſelf for to ſave the tail for a Reverſion deſcended and holden no cauſe, becauſe he may have the warranty paramount, *&c.* 18 *E*:3.

The one Parcener upon the default of the other prayed in Aid, and was received upon the default of her husband, did vouch her ſelf and the other Siſter for to ſave the Tail given by the common Anceſtor unto the husband and her, and was received, 11 E:3.*Voucher* 14.

One vouched himſelf to ſave the tail given him in the Remainder, by the render of *B.* to whom *I.* levied a Fine, and good; And it is no Counterplea, that *I.* had nothing, 41 *E*:3. See there, the Demandant may well ſay, that *Partes nihil habuerunt, &c*, ſo that *I.* did not enfeoff, *&c.* 40 E. 3.22. but ſhall not ſay, that the Tenant had Fee in poſſeſſion, for that is to the binding, *Voucher* 70.

Alſo the cauſe alledged, as a Fine, or Feoffment, ſhall not be Counterpleaded, becauſe it hath not an expreſſe warranty, *&c.* 50 *E*: 3. *Voucher* 78. 14 *E*:3. 109. 31 *E*.3.*Voucher* 23. 13 E.3. 119.

He to whom the Remainder is given in tail, upon a Render in a Fine, ſhall vouch himſelf to ſave it, although he be not Heir of him who renders the land: but it ſhall be a good plea, that the particular Tenant had nothing of the Gift or Feoffment of him who is ſuppoſed to render the land, for that is to the cauſe: but he ſhould not have had the Averment that he who rendred had not any thing of the Gift of him who acknowledged the Fine, becauſe the Fine is executed, 41 *E*:3. *Voucher* 69. 32 E:3. 96. and 14 E.3.109. and 13 E.3. 17.

But it was granted, 32 E: 3. *Voucher* 69. That where the Tenant doth vouch himſelf, the Demandant is in the place of the Vouchee to counterplead the warranty.

The Husband having a warranty to him and his wife in tail, diſcontinued for life, and was received upon a default of the Tenant, and vouched himſelf to ſave the joynt Eſtate, and holden a good Counterplea to ſay, that he is in of another Eſtate, 19 E:3.122. 41 *E*: 3.70.

It is no Counterplea where he in the Remainder voucheth himſelf, to ſay, that the warranty is onely to the Tenant for life, 25 E: 3. *Voucher* 144. 5. *Aſſ* 11 H.7. 4.

Leſſee

Leſſee for life ſhall not vouch himſelf to ſave the Remainder, nor to ſave his own eſtate, 7 *E*:3.153.

Tenant by Reſceit voucheth the Leſſee who enfeoffed him firſt, it is a good Counterplea that he hath nothing of his Feoffment, 18 E: 3. *Voucher* 9.

A woman received vouched her husband as Aſſignee of *T.* to whom the husband levied a Fine, and yet rendred, *&c.* in Fee 13 E: 3. *Voucher* 17.

The Tenant vouched himſelf and the younger Brother, *&c.* alledging the Feoffment of his Father, it is a good Counterplea, that he did re-enfeoff the Father, and the younger Brother, and to the heirs of the Father, and that he himſelf is heir, ſo the warranty is extinct, 40 *E*:3.14.

But where he hath by Feoffment, *&c.* VVarranty extinct by diſcent of the Reverſion, is no Counterplea, nor where he is in by Feoffment, 41 E. 3.61.

VVhere the husband and wife are vouched for cauſe, as for their Feoffment, it is not ſufficient to traverſe the Feoffment of the wife, but of them both, 43 *E*:3.65.

Entry into the VVarranty generally is no Eſtoppell to revouch the Tenant for cauſe, 7 *E*:3.152.

The husband voucheth his wife for Feoffment before the Coverture, it is a good Counterplea, that he did not enfeoff before the Coverture, 32 E:3.202. ſee 13 *Aſſ*:9.

In a writ of ward the Defendant vouched by a Deed, the Plaintiff ſhall not have anſwer to the Deed, becauſe the Defendant may bind himſelf by another Deed, 30 E:3.103.

XXXVI. *Where one may enter into the Warrantie ſaving his Action, or Rent, or Entry.*

TEnant in tail diſcontinueth with warranty and dieth, the Feoffee voucheth the Iſſue, he was forced to enter into the warranty, and ſaved his Action of *Formedon* by Proteſtation, 7 E:3. 45. 11 *H.*4. *vi.* 8.E.3. the Guardian pleaded that matter, and could not be admitted to the Plea before his entry into the warranty, 5 E: 3.15.

So of an Action of Fee-ſimple, as that the Anceſtor dieth ſeiſed, and the Tenant abated: So ſaving his Action of Mortdanceſter, *&c.* for in none of the ſaid Caſes, he ſhall not ſave the Land to be put in value, but the Action of the Land demanded againſt the Tenant, 4 E:3. *Voucher* 176. and 5 E:3.59. where *Trem.* ſaith, That he ſhall make proteſtation only for to ſave Fee tail; ſo ſaith *Wilby*, 3 E:3.51. 50 E:3. 12. That he cannot enter into the warranty, ſaving the Action of Fee, where Fee is demanded.

VVhere an Infant entreth into the warranty, ſaving his Action of *Dum*

ſuit infra ætatem of the Alienation of his Anceſtor, the proteſtation was not entred, for his Action ſhall be ſaved, without ſuch ſpeciall entry of it, 14 E:3 *Voucher* 226.

The husband having cauſe of Aſſiſe, or writ of entry being vouched with his wife, by the binding of the wife, entreth generally into the Warranty: Now he ſhall be barred of his Action during the life of his wife, but not after, 13 E 3. *Garr.* 36.

See 50 *E*:3.12. Where a man cannot enter into the Warranty, ſaving the Action of Fee, where Fee is demanded; but he may wel, where Freehold or Tail is demanded: And ſee 6 E:3.11. That a general entry into the Warranty, confirming the eſtate of the Tenant who maketh Defeaſance, as for a Condition broken, for which he would not enter, but ſuffered the Demandant to recover, *Quære*, if he might have entred into the Warranty ſaving his Action, or re-enter, for nothing is ſpoken of that there, 16 E:3. 11. ſee 12 E:2. *Voucher* 264. 31 E:3. *Voucher* 285.

Where Leſſee for life voucheth him in the Reverſion, he may well enter into Warranty, ſaving *&c.* a hundred ſhillings of Rent, and if he doth not ſo, he may loſe it upon the rendring in value, 2 E. 1. *Voucher* 208. 12 E:2. *Voucher* 264.

XXXVII. *Where the Vouchee ought to enter ſpecially in the Warranty, for the loſſe that may be to him.*

NOte, that where the Vouchee entreth into the warranty generally, and loſeth, yet he ſhall not render in value, but according to the eſtate which the Tenant looſeth, for he need do no more but to bar the demandant, 38 *E*:3.16. 7 E:3.41 E.3.7.40. *Aſſ.* 43 E:3.7. 44 *E*: 3. 39. 16 *E*.3. *Voucher* 87. *acc.*

But if a ſtranger releaſe to my Tenant for life in Fee, with warranty, and he vouch him, and he entreth ſimply into the waranty, he ſhall render a Fee in value; otherwiſe it is of a ſpeciall entry, *&c.* 16 *E*:3 *Voucher* 87. by *Green.* But ſee 38 *E*:3.21. that he ſhall not render but for life, if the Tenant do not bind himſelf ſpecially in Fee, and hath the ſame entred ſpecially.

If the Vouchee demand what he hath to bind him to warranty: And the Tenant bind himſelf as of Fee, whereas he hath an eſtate but for life: Now upon a generall entry into the warranty, the Vouchee ſhall render fee in value, by *Herle*, 8 *E*:3.70.

But ſee 17 *E*: 3. 62. That notwithſtanding ſuch generall entry upon ſuch binding alledged, yet if the Tenant alledge it upon a ſpecialty, which in truth doth comprehend a warranty, but according to the eſtate, the Vouchee ſhall not warrant more, by *Wilby.*

In a *Precipe* of twenty acres, the Tenant ſaith, that the whole land in demand

demand is but ten acres, and of that vouch, as of the whole demanded, (*Ut oportet*) the Vouchee ſhall be ſummoned to warrant the land demanded, and if he warrant all, it is good, and if he extort warranty of parcell, the Demandant ſhall have Seiſin of that part, with an entry of his challenge upon the Voucher, 19 *E.*3. *voucher* 129. But ſee, 17 *E*: 3. 62. That upon ſuch Voucher, where the Vouchee enters generally, he ſhall not render in value, but according to that which he is bound to warranty, and not according to the demand, if not upon demand, that he is in of the whole *&c.* the Tenant alledge a binding in the whole, without ſhewing a Deed, that he hath warranted but parcell of it.

See 5 *E*:3.7. where generall Voucher in a *Præcipe* of twenty acres, the Vouchee after a generall entry into the warranty, may ſay, that the whole demand is but ten acres, and of that plead in Bar: And he need not pray in Aid to be diſcharged of the reſidue, but the Demandant ought to pray Seiſin of the reſidue, by *Stone*, 17 *E*: 3. 62. *Wilby* agrees there, that the Vouchee ſhall not render more in value by his generall entry into the warranty, then the Tenant loſt, by *Schard*, 17 *E*. 3. 63.

Rich. then ſaith, If the Tenant upon the Demand, &c alledge a binding which is but to parcell, and the Demandant challenge, or except againſt it, yet if he plead over, and doth not demur untill it be adjudged, that he ought to be quit of that parcell, he ſhall render in value according to the demand, *vi.* If the Proteſtation ſhall help him, when there is not a Deed proving that he was bound but to warrant parcell.

VVhere in a *Præcipe* of Land in five Towns, the Tenant vouched and ſhewed that he was bound but in four Towns, &c. A generall entry, &c. ſhall not bind the Vouchee but for the Lands in the four Towns: But *Newton* ſaith, That this ſhall be a good Counterplea to the binding, 22 H. 6. 13. But this is but for the Land in the fifth Town, by *Herle*, 7 *E*. 3. 6.

But if the Tenant in that caſe vouch generally, and ſheweth a Deed upon the Voucher (as where he voucheth an Infant in Dower) and the Deed ſpeaks only of four Towns, the Demandant may have Seiſin of the land in the fifth Town, by *Herle*, 7 *E*. 3. 6.

And ſee 10 *E*: 3. 12. Where in a Writ of eight pounds, the Tenant ſaith, that the whole demand is but of three pounds ten ſhillings, and voucheth: now the Vouchee ſhall render in value but three pounds ten ſhillings, although he enter generally into the Warranty, and although the Demandant declare againſt him of eight pounds: but the Demandant ſhall recover the whole demand againſt the Tenant, if in truth it be ſo much, and if in truth it be not, yet he ſhall recover the three pounds ten ſhillings, for that is acknowledged by the Tenant.

And if the Tenant vouch of the whole, and the Vouchee is to traverſe part with him, and will not enter as to that part, the Demandant ſhall recover that part preſently, 10 *E*. 3. 12.

Upon generall entry into the Warranty, land which he hath not but for life, or in tail, and that by diſcent, ſhall be put in value, 7 *E*: 2. *Dower* 148.

Alſo

Alſo he who entreth generally into the Warranty, ſhall render according to the value of the land, as it now is, not as it was at the Feoffment made, 19 *H*:6.46. and 61. And therefore the value as it was at the time of the Feoffment was entred by way of proteſtation, 2 *E*: 3. *Voucher* 190. and 91 *E*.3. *Voucher* 288.

And therefore where the Grantor of a Wardſhip of the value of twenty pounds *per annum*, which by a later diſcent of the land, is now of the value of a hundred pounds *per annum*, entred into the warranty, without the proteſtation, he was driven to render the hundred pounds in value: but otherwiſe it is where the value is increaſed after the Judgment, for there he need not take proteſtation, that at the time of the entry, *&c.* ſo no default is in him, 30 *E*:3 3 *E*.3 *Recovery in value* 1.8.

Dower of the third part of a Mannor, the Heire of the husband vouched, rendred the Demand, and for ſo much ſhall be vouched according to the demand, although the warranty was but of one houſe, becauſe he entred generally, and took no proteſtation that the Deed did not extend to the whole, *&c.* 16 *E*:3. *Voucher* 61.

Note, the Vouchee upon the entry into the warranty may well make proteſtation, ſaving his entry for a Condition broken, &c. or ſaving the Morgage, *&c.* otherwiſe he ſhall render Fee undefeiſable, *&c.* 12 *E*:2. *Voucher* 265. 31 *E*:3. *Voucher* 285. So he may do ſaving his Rent-charge, 12 E: 2. *Voucher* 264.

XXXVIII: *Where a man ſhall vouch, or rebutt by Warranty which commenceth by Diſſeiſin.*

FAther and Son Joynt-tenants, the Father maketh a Feoffment of the whole with warranty, and dieth, it commenceth by Diſſeiſin for a Moyety, and is good for the other Moyety, 22 *H*:6.51. 13 *E*:3. *Garr.* 24, 25. 19 *E*:3 *Garr.* 38.

The Grandfather Leſſee for years, makes a Feoffment with warranty, this is by Diſſeiſin: but if he had a Freeholder for life, the Feoffee ſhould vouch, 43 *E*:3. *Gar.* 13. *vi.* 16 *E*:3. *Gar.* 20, 21. *vi.* 31 E:3. *Gar.* 28. 22 *H*:6.51. The Father Joynt-tenant alieneth, the Son is put to his Action for the Moyety, the eſtate was to the Father and Son, and to the Heirs of the body of the Father.

If my Father who diſſeiſeth me, or is my Leſſee at will, maketh a Feoffment with warranty, it is by Diſſeiſin, 46 *E*: 3. 21. 31 *E*: 3. *Garr.* 28. Otherwiſe it is where the Father diſſeiſeth a ſtranger, or being the Leſſee at will of a ſtranger, maketh a Feoffment, *&c* that ſhall bind the Heir, 50 *E*:3. *Counterplea of warranty* 2. But if my Father giveth land in tail, and my Uncle doth diſſeiſe the Donee, and makes a Feoffment with warranty, and

and the Donee dieth without iſſue: Now in a Formedon in the Reverter, I ſhall not be barred by this warranty, yet the Diſſeiſin was done to a ſtranger, &c. 31 *E*:3. *Gar*.28.

XXXIX. *Where one ſhall be bound to VVarranty, without cauſe of VVarranty, and where a man ſhall be bound by a VVarranty, to which he is a ſtranger.*

HE who gives Lands in Frankalmoign, and his Heirs ſhall be bound for ever to warranty, during the eſtate, 7 *E*:2. *Gar*.79. ſee 4 *E*:3. 19. and 3 *E*:2.

The ſame Law of a Tenure by Homage Anceſtrell, after the Homage recited, and during the continuance of the eſtate in the blood, *&c. t. E*.1. *Gar*.90. But it is there ſaid, that the Lord and his Heirs who alien, the Lord ſhall yet be bound to warranty, *Quod quære.*

The ſame Law of Exchanges, but here the Heir ſhall not be bound to warranty, if he hath not the land in Exchange in poſſeſſion, 22 *E*:3.3.

The ſame Law of the word, *Dedi*, in the Deed of Feoffment, where a Seigniory is reſerved, the Heir ſhall be alſo bound to warranty, and that againſt the Aſſignee of the Tenant for the poſſibility of the Eſcheat, &c. 31 *E*:3. *Gar*.92. *Voucher* 258. there was the word *Acquietare, & defendere*; but the ſame are no words of warranty, 6 *E*:2. *Voucher* 258.

If a man grant to me, that he will render to me in value if I loſe, &c. the ſame is but a Covenant, and I ſhall not vouch by it, 39 *E*:3. *Aid of the King* 52.

He who granteth a ward by *Dedi*, ſhall be vouched, but not his Heirs, nor Executors in a writ of ward, 3 *E*:2. *Voucher* 222. 12 *E*:2. *Voucher* 27. 8 *E*:3. *voucher* 60.

The husband ſhall not vouch in a writ of ward, where the wardſhip was granted to the wife then ſole, by the word *Dedi*, becauſe he is Aſſignee who ſhall not vouch by that word, *quære* of the husband, 29 *E*:3. *voucher* 312.

But ſee 30 *E*:3.6. *Recovery in value* 1. where the Heir of the husband or any Aſſignee in Fact, or in Law, ſhall vouch by *Dedi*, but the Heir in execution ſhall not be vouched, but where a Rent is reſerved, &c. 28 *Aſſ*: 39.25 *Aſſ*:8.2 *H*:7.8.

If a Feoffment be made rendring Rent and Service, and the Feoffee alieneth to hold of the Lord, and rendring Rent to him, this Feoffee may well vouch the firſt Feoffor as Aſſignee by word, without clauſe of warranty, 13 *E*:3. *voucher* 119.

If two make a Feoffment by *Dedi*, and one dieth, his Heir ſhall not be vouched, but the Survivor only, for *Dedi* ſhall not bind the Heir without Rent, or Service reſerved, or expreſſe clauſe of warranty, 29 *E*:3.26.

XL. *Where*

XL. *Where a man ſhall be vouched and bound to Warranty by reaſon of a Reverſion.*

TEnant in Frank-marriage ſhall vouch or rebut the Donor or his heirs for the Reverſion deſcended, without clauſe of warranty, 31 E. 3. *Gar.* 29.

The Heir was vouched by the Leſſee for life of his Anceſtor, and it was holden that he ſhould be bounden to warranty, if he do not diſclaim in the Reverſion, although the Leaſe was without Deed, and no Rent reſerved, 14 *E*: 3. *Warranty* 32.

As to the Deed, ſee 6 E: 3. 11. where the Heir was driven to enter into the warranty, if he would not diſclaim, but there a Rent was reſerved.

Of the Diſclaimer of him who is vouched for a Reverſion, ſee 40 E. 3. 27. That it ſhall not be ſuffered where a Rent is reſerved: And ſee 20 H. 6. 25. where the Leſſor himſelf ſhall not diſclaim, where he is vouched for the Reverſion, but his Heir, or Grantee, &c. although it be by Fine, &c. may well diſclaim: yet it is holden, 17 E: 3. 39. that the Leſſor himſelf may well diſclaim, if not in Dower, &c. 7 E: 3. 5 E: 2. *voucher* 249.

Tenant for life with warranty, yet he ſhall vouch the Grantee of the Leſſor for the Reverſion, 20 E: 3. *Counterplea of warranty* 7.

The Heir was vouched for the Reverſion of a penny of the Rent, and for the Rent by a Deed, 7 E. 3. 6. *vi.* 5 E: 3. *voucher* 184. ſee 6 H. 7. 2. where the Leſſor himſelf ſhall not be bound for a bare Reverſion, without the word *Dedi*, or a Rent reſerved: See contrary, 10 H: 7. 10. and admitted, 7 H: 3. 43.

Tenant by the Curteſie may vouch him in the Reverſion, but ſhall recover nothing in value, 14 H: 6. 25. ſee there, Tenant for life ſhal not vouch him in the Remainder.

Of the Voucher of Tenant by the Curteſie, ſee 14 H: 3. *voucher* 275.

In Dower the Tenant vouched the Heir of the husband, for the Reverſion, and good, 8 E: 3. 7.

Tenant for life vouched him in the Reverſion, without ſaying of whoſe Leaſe, &c. 10 E: 3.

The Heir was vouched for a Reverſion where a Rent was reſerved without Deed, 6 E. 3. 11.

The Leſſor was vouched for a bare Reverſion, 6 E: 3. 46.

The Reverſion with Services ſhall bind the Heir to warranty without a Deed, 11 E: 2. *voucher* 261.

Tenant in Dower ſhall alwaies vouch for cauſe of the Reverſion, 29 E: 3. *voucher* 309. ſee 15 *H*: 3. *voucher* 276.

A Vicar Leſſor was vouched, and prayed in aid, 9 E: 3. 8. and 30.

XLI. *Where*

XLI. *Where a man fails of binding against his Vouchee, and where of part of it.*

WHere the husband and wife are vouched, and bounden by their Deed before Coverture, the husband ſhall only warrant the land, and the wife ſhall be diſcharged; ſo he hath not failed of the whole, 44 E:3.20 E:3.*voucher* 130

He who voucheth two as Heirs, and when they appear, he confeſſeth that one of them is not Heir, or he voucheth one as Heir, and ſaith, that he hath a Co-heir not named: Or if upon the Voucher of two he confeſſeth that he hath releaſed to one of them: in theſe caſes he hath failed of his whole warranty: But where the one Vouchee is not ſummoned, he ſhall loſe as to a Moyety, and ſhall have warranty againſt the other who doth not appear for the other Moyety, 45 *E*:3.23.

See where upon the default of the one he ſhall have the whole warranty againſt the other by averment, that he who appeareth not hath nothing, 27 *E*:3.

But where he hath colour to vouch both, although that one extort the Warranty, he ſhall have the whole againſt the other; As where he voucheth the Survivor of the Feoffors, and the Heir of the other by *Dedi*.39 E.3.26. Otherwiſe it is, where he hath no colour againſt the one.

And if the Lord vouch, and hath binding but for parcell of the land in demand, he hath failed but of parcell, and of that the Demandant ought to pray Seiſin, 10 *E*:3.and 17 E:3.63.

So where the binding is not in ſo many Towns, as in the demand, 7 E:3.6. 19 E:3.*Voucher* 123. 22 *H*:6.6.

Præcipe of a houſe and ſix acres, &c. the Tenant vouched, and the Deed of binding to warranty was but of a houſe *cum pertinentiis*, yet it was good for the whole, 4 *E*:2. *voucher* 244. 12 *E*:2. *voucher* 264.

Two Joynt-tenants, the one of full age, the other within age make a Feoffment with warranty; the Tenant voucheth them, he faileth as to the Infant, but he ſhall have the whole warranty againſt the other, *t*. E. 1. *voucher* 267. 39 E:3.26. by *Merton* and *Chandiſh*.

The ſame Law where two are vouched for a Reverſion, and the one diſclaims, ſee there, 39 *H*:6.26.

But if he ſhew ſeverall bindings upon a Joynt-voucher of two, he hath failed of the whole, by *Merton* and *Chandiſh* there: Alſo when he voucheth one, where he ſhould vouch two: And 45 E:3.23. where one voucheth, and two ought to vouch, &c. for Voucher is as an Action.

In Dower, the Vouchee voucheth *S*. and the Deed was to him and his wife, and therefore failed for the whole, 10 E:3.52. wherewith agrees, 38 E:3.5. yet if the wife were received in the caſe, he ſhould have the Voucher, 10 E:3.

The ſame Law where the Joynt-tenant who hath fee is received, *ib.* and Voucher, 4 E: 2. 243.

Entry ſuppoſing by *A.* the Tenant may well ſay, that *A.* and *I.* leaſed &c. and vouch 36 H.6. *Entry* 48. 32 H:6. 21.

So where the Writ doth ſuppoſe that he entred by *I.* and *A.* he may well plead that he entred by one of them, 44 E: 3. 31. ſee 22 H. 6. *Voucher* 37.

XLII. *VVhere the Vouchee ſhall revouch the Tenant, or one of the Tenants.*

THe Vouchee, if he do revouch the Tenant, he ought to ſhew cauſe, 16 E. 3. *voucher* 87.

But where husband and wife vouch, the Vouchee may well revouch the husband without ſhewing cauſe, 17 E: 3. *voucher* 92. 7 E: 3. *voucher* 152. 10 E: 3. 174.

So alwaies where the Vouchee doth imply a cauſe, there a ſpeciall cauſe need not to be alledged: As if two vouch one, he may revouch one of them without ſhewing cauſe, &c. 11 *H.* 4. 22. 20 H. 6. 2.

Warranty of Charters.

I. *The Declaration in a Writ of Warranty of Charters.*

WArranty of Charters againſt *I. quia de eo tenet, & unde chartam habet*, the Writ good, and the Declaration was of the Feoffment of *J.* by a Deed ſhewed, and the Plaintiff acquitted of Diſſeiſin: and that this writ was brought hanging the Aſſiſe, and the Declaration good that he held of him, notwithſtanding that the Feoffment was after the Statute, for this is the ancient form. And *Wilby* ſaith, That he hath ſeen a Warranty demanded by Homage Anceſtrell upon ſuch a Writ, 24 *E*: 3. 25. *Warranty of Charters* 1.

The Declaration ſhall be good, that this Writ was brought pendant the Aſſiſe againſt him, without ſaying, that he hath loſt any thing, for

it

it is but to dereign the warranty, but to declare upon a gift where the warranty is by releaſe, ſeems not to be good, and if the deed of gift be in his poſſeſſion, ſo as it enureth as a Releaſe, he ought to declare upon a Releaſe, 3 E.3.8. *Gar. de Charters* 3. and he may well declare upon a Releaſe where the deed is, *Unde chartam habet*, *M.* 44 E.3. *warranty of Charters* 18. and he may declare to his damages, without alledging any loſſe in fact &c 3 E.3.21: *Gar. of Charters* 4.

The Plaintiff declared upon a Releaſe of the Grand ather by Fine, and that one *T.* ſued a *Scire facias* againſt the plaintiff, who prayed the Defendant to warrant the Land *&c*: and did not declare that this Writ was brought hanging the *Scire facias*, for that is left to the Defendant to challenge, 46 *Aſſ*: *Warranty of Charters* 5: nor he need not ſay, that the other Writ is yet depending, 41 E.3. *warranty of Charters* 19.

Where the deed of Feoffment or Fine doth comprehend divers things, &c: in this writ he need not alledge of how much he is impleaded, for if he be impleaded but of parcell, the Defendant ſhall warrant the whole, and ſhall render in value according to the loſſe, by *Hill*, and it is no plea, that he is not impleaded, and in a Declaration, that *A*: ſued a *Scire facias* againſt him, upon an ancient Fine, he needeth not to ſay, betwixt what parties the Fine was levied, 29 E:3.3: *Brief* 900.

He who had recovered his Warranty in a writ of Warranty of Charters, brought a *Scire facias* of it, and declared that he loſt 100 s. of Rent out of the ſame Land, whereof &c. and alledged all the matter certain in the Writ, and prayed Execution to the value, and the opinion was, that if that Rent were an elder charge before the Feoffment, he ſhould not recover warranty of that by a generall Writ of the Land, but he ought to have brought his Writ of *warrantia Charta*, depending the ſuit of the Rent, and ſome ſaid, that he ought to declare, that the Defendant did enfeoff him of the Land diſcharged of the Rent, otherwiſe it ſhould not bind him, for the Law gave him an anſwer to diſcharge himſelf of the warranty of the Rent, &c. 30 *E.*3.30. *Warranty of Charters*, 22 ſee *F. N. B.* 135.

II: *Where warranty of charters ſhall be brought, hanging the action againſt him, and where againſt him againſt whom the action is depending, and for him againſt whom this Writ is brought, where for the Vouchee.*

AN Aſſiſe was brought againſt Feoffor and Feoffee, and hanging the ſame, the Feoffee brought a Writ of Warranty of Charters againſt the Feoffor, and well, 24 *E.*3.35. *War. of Charters* 1.

It ſeems to bee a good anſwer for the time, that there is no action depending againſt the Plaintiff, 46 *Aſſ. warranty of Charters* 5. But upon

ſuch plea, the plaintiff ſhall recover the warranty, *pro loco & tempore*, 29 *E.*2.3.

The vouchee ſhall not have this Writ, but depending the firſt action by *Ing.*30 *E.*3.30. *Warranty of Charters* 22. But *Shard & Hill* for clear Law, 17 *E.*3.44. he ſhall not have warranty of Charters at all. See 18 *E.*3.19.

It is a good Plea, that the Plaintiff was not Tenant the day of the Writ brought, but the Writ ſhall be well maintained by this, that he was Tenant by warranty the day of the Writ brought, although he had not the Land, 3 *E.*3.21. *warranty of Charters* 4.

Where a man is vouched, where he cannot vouch over, he ſhall have a writ of warranty of Charters, 7 *H.*4.18. *F.N.B.*135. a Pernor of the profits ſhall not have this Writ, *Fitzh. N.B.*135.*D.*

III. *Where a man ſhall have this Writ, before he hath loſt*, pro loco & tempore, *and when he hath cauſe to have this Writ, when not.*

THe Plaintiff alwayes in this Writ, ſhall recover the warranty *pro loco & tempore*, if he hath cauſe to have it, an action being depending againſt him, and nothing yet loſt, 1 *E.*3.11. *Warranty of Charters* 2 *F.N.B.*134.*K.* 5.*E.*3.47.

The Plaintiff ſhall recover, *pro loco & tempore*, in this action begun after Non-ſuit of the Plaintiff in the firſt Writ, 9 *E.*2. *warranty of Charters* 30.34 *E.*3.20. *Diſceit* 28.*acc.* See *F.N.B.*135. of the Non-ſuit and old *N.B.*159. that it behoves, that the action be brought, hanging the firſt Writ, and then Non-ſuit depending this ſhall not hurt.

This Writ bore Date in *October*, and alledged to be impleaded in an aſſiſe the week after the aſſumption of our Lady, ſo the day of aſſiſe was paſt, yet with averment, that he prayed him to warrant the land, and that the aſſiſe is yet depending, the writ was awarded good, 16 *E.*3. *warranty of Charters* 31.

It is no Plea in this Writ, that he is not impleaded, 29 *E.*3.3. *Brief* 900. 30 *E.*3.30. 18 *E.*3 14. *warranty of Charters* 8.*acc.* and that he ſhall not recover damages, when he is not impleaded; and therewith agrees 4 *E.*2. *Warranty of Charters* 28. although that the warranty be counterpleaded, but if he deny the Deed, he ſhall anſwer damages, although the other hath not loſt the Land, 42 E. 3 7.5 E 3.47. *F.N.B.*135.H. that he ſhall have damages for the land loſt.

A Rent with a Reverſion reſerved without deed, is a good cauſe to have this Writ, ſo the word *Dedi* without expreſſe warranty, but this not againſt the heir, *F.N.B.*134.*B* H. *Quære*, if he who hath recovered warranty, being impleaded afterwards, ought to give notice for a Plea.

IV. *Where*

IV. *Where he who hath recovered* pro loco & tempore, *is put to a new Writ of Warranty of Charters.*

HE who hath recovered the warranty, as a generall Writ of warranty of Charters againſt the Feoffor being impleaded by a ſtranger in a *Scire facias*, for rent iſſuing out of the ſame land, ſhall have a new writ of warrannty of Charters by *Ing. Burton* and *Thorp* Juſtices, becauſe that the Feoffor might have good matter of Bar, as to the Rent which he had, not to the land, and he ſhall not be charged without anſwer *&c.* 30 E. 3. 30. *Gar. of Charters* 22.

If land be demanded, and rent out of the ſame land, the Tenant ſhall have two Writs of warranty of Charters, (s) of each a Writ, 31 E. 3. *warranty of Charters* 7.

V. *Where and when the Lands ſhall be bound to the value by this Writ, and where there ſhall be recovery, and what thing recovered in this Writ.*

Stone Juſtice ſaith, that if a man hath acknowledged warranty by this Writ, that his lands are bounden in whoſe hands ſoever they come afterwards, but *multi dicebant contrarium*, and that they are not bounden but for the time that the Writ is depending for the land, and although he loſeth the land by a falſe Plea, yet he ſhall have in value, and that by *Scire facias*, *T.* 1. E. 3. 11. *warranty of Charters* 2. But if he againſt whom he recovereth the warranty, did offer a good plea unto him, and he will not plead it, but another plea, and loſeth the land, he ſhall recover nothing in value by *Ing.* 30 E. 3. 30. *Gards* 22. So no miſchief to him that warrants.

But if the Defendant doth confeſſe the warranty, and the other loſeth, he ſhall recover in value preſently, without *Scire facias*, if the Defendant alſo confeſſe the loſſe, otherwiſe not, and he cannot have in value, but of the lands, which the defendant had the day of the warranty deteigned, *P.* 16 E. 3. *Warranty of Charters* 20 9 E. 2. 3. *warranty of Charters* 30. *acc.* to the warranty and loſſe confeſſed, 4 E. 2 *Warranty of Charters* 29. and he ſhall recover to the value loſt, and damages.

Warranty of Charters againſt *A.* upon a Charter of his Grandfather the defendant ſaith, that he had nothing the day of the Writ brought, upon which at iſſue, and the Plaintiff did recover the warranty *pro loco & tempore* preſently, 46 *Aſſ. Warranty of Charters*, 5. 9 E. 2. *Warranty of Charters* 30. that the lands which he hath the day of the Writ brought, are bounden, and therewith agrees 1 E. 3. 11. *temp.* E. 1. *warranty of Charters* 24.

Fulthorp

Fulthorp ſaith, that if I recover in warranty of Charters againſt my Feoffor Diſſeiſor, I ſhall have execution, although the Diſſeiſor entreth afterwards: *Paſton negat*, becauſe the ſame hath relation to defeat the warranty *&c.* 22 H.6.22. *Fitzh.* ſaith, that ſuch entry ſhall not abate the Writ of warranty of Charters brought before: *F. N.B.* 135 *G.*

VI. *VVhat ſhall be a good Iſſue, and Bar in this VVrit.*

WArranty of Charters brought of the gift of the father of the defendant, who ſaith, he hath nothing of the gift of his father, but the Plaintiff diſſeiſed his father, and a good iſſue; for if he getteth the deed, and afterwards diſſeiſed his father, he ſhall not be helped by it &c. 3 E.3.8. *Warranty of Charters* 3.

Warranty of Charters upon a Deed of Feoffment, that nothing paſſed, is a good Plea, 47 *E.*3.35.

Where he declares upon a Releaſe, it is a good Plea, that he had nothing at the time, 44 *E.*3. *warranty of Charters* 18.

It is a good plea, that the Plaintiff had not any thing in the Land the day of the Writ brought, 3 *E.*3.21.

Warranty of Charters upon an aſſiſe brought by *A.* the Defendant ſaith, that before &c. *A.* was ſeiſed untill by *T.* diſſeiſed, who enfeoffed the defendant, who enfeoffed the plaintiff with warranty, upon whom *A.* entred, and the plaintiff re-entred, a good plea, for the warranty is extinct, but if the diſſeiſee had releaſed to the diſſeſor, he ſhould not avoid it, 21 *H.*6.21. 21 *Warranty of Charters* 16. But afterwards the defendant changed his Plea, and ſaid, that *A.* ſeiſed did enfeoff three and diſſeiſed the three, and enfeoffed the Defendant, who enfeoffed the Plaintiff, upon whom *F.* entred, and the three did releaſe unto *F.* but he was driven to plead the Releaſe before the aſſiſe was arraigned: So in the firſt Caſe, he ſhall ſhew if the Entrie were before the firſt requeſt made to warrant, or before Judgment, or pending the Aſſiſe; for *Newton* ſaith, that if the vouchee enter into warranty, and afterwards he pleaded the Entrie before the Aſſiſe, before which was no requeſt, and the requeſt after the Entrie of the diſſeiſee was holden void: So voucher after entrie, and the warranty holden extinct, if the diſſeiſee enter before requeſt, although after the Aſſiſe brought, for if depending the Writ the tenant maketh a Feoffment, and taketh back an eſtate, the warranty is extinct, for which cauſe the Plaintiff ſaid, that ſuch a day pendant &c. he requeſted &c. before which there was no Entrie, and the Defendant was driven to maintain the Entrie before. *Paſton*, if the Defendant was a diſſeiſor at the time of the Feoffment, it is a doubt if he ſhall diſable himſelf &c. 21 *H.*6. *M.*22 *H.*6. 22. *Gar. of Charters* 17.

Warranty of Charters againſt the Heir who ſaith, that he hath a Formedon

medon depending of the ſameland, and not allowed, 2 *E.*3. *Gar. of Charters* 6. *vide* 2. *E.*3. *Gar. of Charters* 13. *ac.* and that the iſſue in Tail ſhall not be helped by a Formedon depending of the Land, *temp. E.* 1. *Gar. de Charters* 32. *acc.* that the iſſue in Tail ſhall be charged with aſſets deſcended.

If the Plaintiff declare upon a deed of the Defendant, he may well traverſe it, and the action ſhall not be maintained by it, that he hath a deed of his anceſtor, 12 *H.*3. *Gar. of Charters* 27.

The Defendant ſaith, that he did not warrant, but againſt himſelf and his heirs, the Plaintiff ſhewed cauſe for what he is bounden to warranty, and alſo if he be impleaded by another by his Colluſion, this is good.

Of a Bar for the heir ſee, 46 *E.*3. *Diviſion* 6.

VII. *In what writs the party ſhall be impleaded, when he ſhall have warranty of Charters, and where it ſhall be maintained, where he may vouch,*

PRoperty, the writ lieth for him who is impleaded in ſuch an action in which he cannot vouch, as in Aſſiſe, 24 E.3.35. *warranty of Charters* 1.

So in a *Scire facias*, 46 *Aſſ. Gar. of Charters* 5.

So in a *Quare impedit*, 9 *H*:6. 56. *warranty of Charters* 15:44 *E.*3.35.

Warranty of Charters, by him who was impleaded in a Formedon, and not challenged, 41 *E.*3. *warranty of Charters* 19.

But it ſeems the warranty was upon Releaſe, ſo as he could not vouch, and ſo it appeareth in the ſame caſe in Deceit, 43 *E.*3:20.

For him who is impleaded in a Writ of Entrie in the nature of an Aſſiſe, 9 E.2. *warranty of Charters* 30. yet it is ſaid there, that he might have vouched, and then it might be that the Defendant might have barred the demandant, and the plaintiff would have maintained his Writ for the miſchief, that the Defendant might have aliened before the voucher &c. but he could not, for which he ſaid, that the Demandant in the Writ of Entry was Non-ſuit, ſo as he is but to recover the warranty, for which the other anſwered &c. 9 E. 2.

So note, he that is not well impleaded ſhall have this action, if he be not impleaded in an action in which he may vouch, *F*:*N*:*B*:134.135.

Yet in this writ it is holden for no plea, that you are impleaded in a Formedon where you may vouch, becauſe it is to recover but the warranty, but in a *Scire facias* to have in value upon loſſe, in ſuch a writ it ſhall be a good Plea, 18 *E*:3.32: *Gar. of Charters* 8.

Warranty of Charters by him who is impleaded by writ of Right cloſe in ancient demeſne, both parties being of the ſame *Soke*, ſo as he might be helped by voucher there, yet the writ was holden good, becauſe the warranty upon the ſpecialty is altogether at the Common Law &c.

temp.

*temp. E.*1: *warranty of Charters* 23. See *F: N: B:* 13 & 14. the form of it.

I ſhall have this Writ againſt my Feoffor who confeſſeth himſelf my Villain, but ſhall not vouch him, 48 E 3. 17. *Counterplea of voucher* 31. 15 E. 3: *Counterplea of voucher* 43.

VIII. *Where the heir or his Lands ſhall be bound by a warranty of his Father, by this writ.*

THe heir ſhall not be driven in this Writ, upon the warranty of the anceſtor, to anſwer if he have by deſcent, but it is ſufficient to ſay, that he had nothing the day of the Writ brought, 46 *Aſſ. warranty of Charters* 5.

See *Diviſion* 7: before, the heir charged, and he ſhall not be diſcharged by an action depending of the ſame Land, although he be iſſue in Tail.

Where the Writ ſaith, *Unde chartam ſuam habet &c*: now when he appeareth he ſhall not be charged by a deed of his anceſtor 12 *H*: 3: *Gar. of Charters* 27.

If Tenant in Tail alieneth with warranty, and leaveth aſſets, his iſſue ſhall be charged in this Writ, *temp.* E: 1: *warranty of Charters* 32.

IX. *Where a man ſhall not have warranty of Charters againſt himſelf to ſave the Tail.*

RElevieth a fine to *B*: *come ceo* &c: and *B*: renders him the Land, to hold of him, and his heirs of his body, and that after his death the Land ſhall revert to *B*. and his heirs aforeſaid &c: now *B*: ſhall not have warranty of Charters againſt himſelf to ſave the Tail, it ſeems no entail, 42 E: 3: 5: *Scire facias* 81.

X. *Where requeſt gives Title to have this Action, and where it lyeth after the Land recovered againſt him.*

SEe it well argued of the requeſt, 21 *H.* 6: and 22 H: 6: *Diviſion* 7: *B*: and ſee there how Juſtice ſhall be upon requeſt.

Warranty of Charters by two, depending the aſſiſe, and after the aſſiſe ended the writ was abated by the death of one of the plaintiffs, the other ſhall well have a new writ: which he ſhall not, if it had been abated by his default, the aſſiſe being determined, 43 E: 3. 22: *Brief* 608: See 48 E: 3: 22: an action after Non-ſuit.

And

And that this Writ is good of a later date, then the day of the Aſſiſe, depending, *Vi:* 16 E: 2: *warranty of Charters* 31, *ſee Diviſion* 3.

XI. VVarranty of Charters for one parcener for Recovery, Pro rata.

ATtaint upon aſſiſe againſt two parceners, one was received by default prayed in ayd, *Pro rata* after partition made after recovery in Aſſiſe, for ſhe ſaid, it may be the greateſt part of the land demanded is allotted to us, and perhaps we ſhall not have warranty of Charters after the recovery *&c:* yet ſhe was ouſted of the ayd, 32 E: 3: *Aide* 37:

XII. VVhere warranty of Charters ſhall be ſued for Rent demanded out of land, and where a ſeverall writ of warranty of Charters of one and the ſame thing.

IF depending warranty of Charters, becauſe impleaded of the ſame land a *Scire facias* is brought againſt the Tenant for rent out of the ſame land, he ſhall have warranty of Charters, by *Thorpe* Juſtice, ſo if he hath ſeverall bindings, one of land, another of rent out of Land, he ſhall have ſeverall Writs of warranty of Charters, being but impleaded of the land only by him: Yet *Finchden* conceives that the binding of the land ſhall go to all, and ſo ſeems to be the opinion of *Seton* Juſtice. But ſee there, that he who enfeoffs me with warranty ſhall not be bound by this Writ to render in value for a Rent-charge which was of an elder time, &c: 30 E: 3: 30: *Warranty of Charters* 22:

But ſee, it is there ſayd, If Tenant in tail of a Rent releaſe to the Tenant of the Land, and he enfeoffeth me of the Land with warranty, and afterwards the iſſue claimeth the Rent, *&c.* that I. ſhall have this writ againſt the feoffor as of land, becauſe the ſame was diſcharged of the Rent at time of the feoffment.

This writ ſhall be brought according to the action againſt him, as if it be by two parceners, he ſhall have two writs of warranty of Charters: the ſame Law, if land and rent be demanded &c. by *Thorpe*, 31 *E.* 3. *warranty of Charters* 7.

Warranty of Charters of land, where Rent was demanded, awarded good, but it was a Rent ſervice, *A* 4. *E.* 3. *warranty of Charters* 12:

Upon a fine of lands in two Counties, I ſhall have one writ of Warranty of Charters in one County of the whole, 29 *E.* 3. *breif* 900. See *F. N. B.* 135. *F.*

If I enfeoff two of two acres ſeverally, and the one enfeoffeth the other of his Acre, he ſhall have warranty of Charters againſt me for both acres, 40 *E.* 3. 41.

XIII. *Of a Reverſion.*

HE who hath but a Reverſion, ſhall not have this Writ, for it ſuppoſeth him Tenant of the Land, &c. and therefore a fine ſhall not be levied upon this Writ to him who hath but a Reverſion, *M.* 19 E. 2. *Fines* 127.

XIV. *Warranty of Charters by Aſſignee.*

THe declaration is good, alledging that he warrant to the plaintif as aſſignee of *T.* yet the Writ made no mention that he was aſſignee, ſo of voucher, 9 E. 2. *Warranty of Charters* 30. 36 E 3. *warranty of Charters* 11. But *Shard.* denyeth that the Writ lyeth for the Aſſignee, *Fitzh.* 135. *D.* That it doth lye for the Aſſignee.

XV. *Warranty of Charters by Cauſe diſcharged.*

THe exchange of the Anceſtor is holden a good binding againſt the heir in this writ, he ſayd, that he did not hold any land in exchange for the land in demand, 23 *H.* 3. *warranty of Charters* 26.

XVI. *Execution upon a Recovery in warranty of Charters.*

IF depending an aſſiſe againſt me, I bring a writ of Warranty of Charters, and recover the Warranty, and the Land is recovered againſt me, I ſhall have execution by *Habere facias ad valentiam*, but where I recover the warranty before any Writ brought againſt me, I ought to vouch the ſame perſon againſt whom, &c. or have a *Scire facias* againſt him, if the voucher doth not lye depending the plea by him who hath right, 19 *E.* 3. *warranty of Charters* 10. And if the Defendant do acknowledge the Warranty and loſs, the award ſhalbe, that the Sheriff extend the land loſt, and give in value, *temp.* E. 1. See of this *Diviſion* 3: and of the execution upon the entry of him who hath an elder right after the warranty recovered, ſee 22 *H.* 6. *Diviſion* 7. See *Diviſion* 6, throughout.

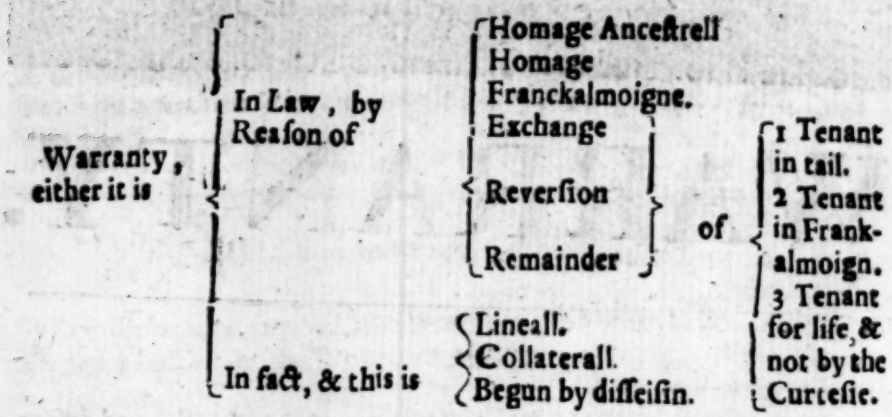
Note by *Englefeild*, That he who hath recoveted the Warranty in this Writ, being afterwards impleaded in an Action in which he may vouch, he ſhall vouch, otherwiſe he ſhall not have in value, 30 E. 3: 30: *warranty of Charters* 22. and therewith agrees *F. N. B.* 134. *I.*

WARRANTY.

I. VVhat.

WArranty is a Covenant reall annexed unto Land, and deſcending upon the heir, by which he is rebutted if hee demand the land to which it is annexed, or if a ſtranger bring an action for the land, then he ſhall be vouched, or if the party to whom the warranty is made, doubteth that he ſhall be evicted by ſuit or entry, he ſhall be impleaded by warranty of Charter, and this deſcription appears by theſe books enſuing. For by *Hank.* 14 *H.* 4. 26. Warranty is a Covenant reall, and for this *Littl. lib.* 3. *cap.* 13 *plac.* 59. ſaith, that by ſuch a Releaſe of Covenants reall, the warranty is extinct, wherewith *Brooke* agreeth, 20 *H.* 7. 4. The queſtion was moved, 2 *H.* 4. 14. of what effect a judgment, *Pro tempore & loco*, is in a *Warrantia Charta*, where it was ſayd, that warranty is but a Covenant which ſhall not bind the Lands of the Grantor, in whoſe hands ſoever the ſame doth afterwards come. *Et ex hoc videtur*, that foraſmuch as the warranty or covenant binds not, that therefore the action is brought, to the intent the judgment ſhould bind, &c. and by ſome, warranty is executory upon the poſſeſſion and ſhall be determined and ſhall enure with the poſſeſſion, 19 *H.* 6. 74. 20 *H* 6. 35. 22. *H.* 6. 15. *Bracton Tract.* 4 *lib.* 5. *cap.* 1. *Warrantizare nihil aliud eſt, quam defendere & acquietare Tenentem, & ſeiſina non transfertur ad Warrantum, ſed rei defenſio, defendere autem non eſt rem reddere.*

II. How many fold.



III. The Cauſe of warranty in generall.

IT is agreed that Warranty implyeth in it ſelfe, recovery in value, and that he which Covenanteth to acquit, ought to acquit the party in fact, and this without the words, that ſhe ſhall render in value, or acquit, 46 *E.*3. 28.

IV. The effect of warranty in generall.

S*Exte Ed.*3.6. *Fitzh. Warranty* 60. by *Schard*, every warranty binds it ſelf to two effects, either of the vouch by force of the Warranty, and there the man ought to ſhew in certain of what eſtate hee voucheth for the recovery in value, or he may rebutt by force of the warranty, and there he ſhall not be put to ſhew what eſtate he claimes, and with this agrees *Brooke* and *Fairfax*, 20 *H.*7.4. 22 *H.*6.5 2.

V. Warranty

Warranty in Law.

V. *Warranty for cauſe of Homage Anceſtrell.*

HOmage Anceſtrell draweth to it warranty, that is, to underſtand, that the Lord who is alive, and hath received homage of ſuch Tenant, ought to warrant his Tenant, when he is impleaded for the land holden of him by homage Anceſtrell, *Lit. lib. 2. cap. 7. pl. 3. 5.* and herewith agrees, *F. N. B.* 134. *F.* 46. *Ed.* 3. 47. 7 H. 7. 2.

VI. *Warranty for cauſe of Homage.*

IF a man give land to hold of him by Homage, he ſhall be bound to warranty after the homage received; but if he grant this Homage and ſervices to a ſtranger, and the Tenant doth homage to the Grantee, the Grantee ſhall not be bound to warranty for this homage done &c. by the opinion of the book, but he that made the Tenure and his heirs ſhall be holden to the warranty, *&c. temp. E.* 1. *Fitzh. warrantie* 90. but 13 *E.* 1. *warranty* 91. In a *Per que ſervicia*, the Tenant was not compelled to do homage, becauſe he had done homage to the grantor of the ſervices before, who was then alive; but he was compelled to attorn, and to do the other ſervices &c. but it was adjudged that after the death of the grantor, that the Tenant ſhall do homage to the Plaintiff, and that the Plaintiff ſhall make warranty to him of the land, notwithſtanding that he had done homage before, ſee the whole caſe *Per que ſervicia*, 23.

VII. *Warranty for cauſe of Franckalmoigne.*

NOte, That if a man give Tenements in Franckalmoigne, he ſhall be bound to acquittail againſt all people, and to warranty for him and his heirs during the grant, *Per Berry* and *Ingram*, &c. *P.* 7. *E.* 2. *Ward* 79 [illegible]

VIII. *Warranty by cauſe of Exchange.*

NOte, That it is granted in an Aſſiſe, that exchange is a Warranty in it ſelfe and good cauſe in voucher, and where exchange takes not effect in *Forma juris*, there it is not warranty, 45 E. 3. 20. and 14 *H.* 6. 2. In a Formedon, a deed of exchange came in pleading with aſſets deſcended, and it appears not by the book, that there was any other warranty,

warranty but by the exchange, ſo it appears that an exchange is warranty in law, and it is as ſtrong as warranty by deed. *Fitzh. N.B.* 135. *b.* ſaith, that he ſhall vouch by this exchange to warranty, and he ſhall alſo have a writ of *Warrantia Charta* by this deed of exchange, although hee hath not words of warranty in the deed, whereto agreeth *Perkins* 61. where a woman loſt her dower in an acre of land, becauſe the other who did exchange loſt his acre by an elder title, and ſo recovered this acre in value by vouching to warranty, *M.* 4. *Edw.* 3. 52. 3 *Edw.* 3. *Fitzh. Dower* 129.

IX. *Warranty by cauſe of Reverſion of Tenant in taile.*

IF a man make a Leaſe for term of life, rendring a certain Rent, or make a gift in tail rendring a Rent without deed, and afterwards the Leſſee or the donee be ſued in ſuch an action where he cannot vouch, there he ſhall have a Writ of *Warrantia Charta*, againſt the leſſor or Donor, or his heir who hath the reverſion, for this reverſion and rent reſerved makes a warranty in Law, by the ſtatute, *De Bigamis, cap: ultimo*, although hee had not any Deed therof, *Fitzh: Nat: Bre:* 134. 2 *H.* 7. 12. 6 *H.* 7. 1. 38. *E.* 3. 32. *Brook warranty* 29. that if the Tenant in tail be ſued, the reverſion is a good cauſe of warranty to plead, ſave againſt him who is to defeat this Warranty with the Reverſion.

X. *Warravty by cauſe of the Reverſion of Tenant in Frankmarriage*

IN a Formedon, the Tenant pleaded in bar that his Anceſtor by nothing that he had done the diſcent, gave him the land in frankmarriage by Deed ſhewed, rendring to him certain Rent, ſaving the Reverſion to him and his heirs, ſo he is bound to warranty by reaſon of the Reverſion, and that he had aſſets by diſcent: *Burton*, ſeeing that the Deed which he ſetteth forth doth not comprehend warranty, judgment was prayed, whether as to this, the Law will put us to anſwer, and durſt not demur, and ſaith nothing diſcended unto him, but five ſhillings of rent iſſuing out of certain land which he held over by the ſervices of 2 *s.* by the year, and ſuit of Court four times by the year, for which ſince he cannot make leſs fine than 2 *s.* by the year, and to pay at every Avoidance 10 *s.* for relief, and ſo that the 12 *d.* which remains over doth not countervail for the 10*s* without that, that he hath any other thing by diſcent, and demands judgment if by ſuch diſcent, &c: Sir, the land demanded is worth 20 *s* by the year: *Clam*, Foraſmuch as he hath confeſſed that he had 5 *s.* by the year,

we

we pray that he be barred for the portion, and of the remainder of the Aſſets which diſcended unto you, *&c. Seton*, Then you confeſſe the matter is ſuch as he hath alledged: And after *Kirton* waived the Demurrer, and repeated the matter over as before, ſo that nothing by diſcent with iſſue, and he prayed that his plea might be entred, 31 *Ed*:3. *Fitz. warranty* 29.

XI. *Warranty by cauſe of the Reverſion of Tenant for life.*

Præcipe quod reddat was brought againſt Tenant for life, who vouched to Warranty *E.* and the Vouchee was bound to the warranty becauſe the Tenant held by Leaſe of the Anceſtor of *E.* for term of life, and becauſe of the Reverſion he was bound without ſhewing any Deed. And the opinion of the Court was, that a man ſhall be bound to warranty by leaſe of his Anceſtor, *&c.* otherwiſe if he diſclaim in the Reverſion, 14 *E*:3. *Fitz. War.* 32. *Conc.* 14 H:6 25.

If Tenant for life vouch him in Reverſion, he ſhall recover in value, otherwiſe it is where Tenant by the Curteſie doth vouch the Heir in Reverſion: But if Tenant for life do vouch him in Remainder to recover in value, he faileth, 14 *H*:6.25. of his binding, and the Demandant ſhall recover by it.

XII. *Warranty by cauſe of Reverſion.*

IF Tenant for life vouch him in Remainder, to recover in value, he failes of his binding, and the Demandant ſhall recover thereby 14 *H* 6.25. 20 *Ed*:3. *Fitz. Counterplea of Warranty* 7.

XIII. *The force of Warranty in Law*

NOte, in a *Formedon* in *Guild-hall*, it was pleaded that the Anceſtor demiſed a term, *&c.* ſaving the Reverſion to him, and his Heirs: So he is by reaſon of the Reverſion bound to warranty, and ſaith, that he hath land by diſcent in fee, and becauſe he ſhewed no Deed which could make a Warrant, and otherwiſe he could not plead a diſcent to the value, Seiſin was awarded, 13 *Ed*:3.8. *Fitz. Warranty* 35. but there 23. 18 *Ed*:3. this Judgment was reverſed. And ſo note, that Warranty in Law with Aſſets, was adjudged a good Bar in a Formedon in the Diſcender. See there the caſe 23. at large, wherewith agreeth the caſe of Frankmarriage, 31 *Ed*:3. *Fitz*:28.

Vpon a *Sur cui in vita* by the Heir of the wife, the Tenant ſaid, that the

the Anceſtor of the Demandant enfeoffed the Tenant to have the ſame lands in tail, and demands Judgment if againſt the Feoffment, with this, that he had Aſſets by diſcent,&c. and the Deed which he had ſet forth before was without warranty. *Clam.* In the Deed there is no warranty, ſo we are out of the caſe of the Statute. *Kirton*, By force of this Reverſion to you deſcended with Aſſets, you are bound to warranty. *Knivet*, For that you plead not in Bar but to a Reverſion reſerved, where the husband could not reſerve any right unto him, where he had no right before but only the Frank-tenement in right of his wife, and alſo he is to defeat the Alienation upon which the Reverſion is reſerved, and the ſame thing which he is to defeat cannot bar him, therefore the Court adjudged that the Demandant ſhould recover, 33 *Ed:* 3. 32. *Fitz: Cui in vita* 4.

In a Formedon in Diſcender, the Tenant pleaded in Bar a Deed with warranty, with this, that he had Aſſets by diſcent in fee by the ſame Anceſtor: And the Demandant ſaid, that it appeared by the Deed that his Father gave the land in exchange, which is now in demand by the Deed, and took other lands of which he died ſeiſed, after whoſe death he never occupied them, but utterly diſagreed, without that, that any other lands diſcended unto him by the ſame Anceſtor, and demands Judgment if by this,&c. and this was held a good plea in avoidance of the warranty, &c. 14 *H.*6.3. And by *Thorp.* 15 *Ed:*3. *Fitz. Bar* 255. The Exchange with agreement is one plea, and the warranty with Aſſets diſcended is a good plea: And by *Cant.* He who was party, or his Heir ſhall have the warranty, by reaſon of the exchange without Deed, and by the ſame reaſon the Aſſignee may rebut you of the Action by Law, 3 *Ed:* 3. *Itin. North. Fitz. Formedon* 44.

Warranty in Deed.

XIV. *What ſhall be ſaid to be Lineall Warranty.*

WArranty lineall is where a man ſeiſed of lands in Fee, maketh a Feoffment by his Deed to another, and bindeth him and his Heirs to warranty, and hath iſſue and dieth, and the warranty diſcendeth to his iſſue, this is a lineall warranty, and the cauſe is, becauſe if no ſuch Deed with warranty had been made by the Father, then the right of the Tenements ſhould diſcend to the Heir, and the Heir ſhould convey the diſcent from the Father. *Lit. lib.*3. *ca.*13. *Pla.*8. *Pla.*11,12, 14, and 18.

And by *Schard* and *Wilby*, the Warranty of every Anceſtor of them who may have attendred the eſtate before him againſt whom warranty is pleaded, although he attendred not the Eſtate, nor no mention is made of them

them in the Writ, it is not a Bar without Aſſets, for it is lineall, 35 *Ed:* 3. *Fitz. Warranty* 73.

And note, that in every caſe where a man demands Tenements in fee tail, by writ of Formedon, if any of the iſſue in the tail, who hath the poſſeſſion, or who hath not any poſſeſſion, make a warranty, &c. if he that ſueth the writ of Formedon might by any poſſibility by matter which might be in fact conveyed to him by him who made the warranty by form of the Gift, this is lineall warranty and not collaterall, *Litt. lib.* 3. *ca.* 13. *pla.* 22.

XV. What ſhall be ſaid to be Collaterall Warranty.

COllaterall Warranty is, where he that makes the Warranty is collaterall to the Title of the Tenements: and this is as much as to ſay, that he from whom the Warranty diſcends cannot convey to himſelf the Title which he hath of thoſe Tenements, by him that made the Warranty, in caſe no ſuch Warranty had been made, *Litt. lib.* 3. *ca.* 13. *pla.* 89. 10. 13. 14.

Alſo where a man is collaterall to the Title, and this man releaſeth with Warranty, *&c.* this is collaterall Warranty, *Lit: lib:* 3. *ca:* 13. *pla.* 25. wherewith agreeth, 38 *Ed:* 3. 21. *Fitz: tit: warranty* 9. And the cauſe for which collaterall Warranty is a Bar to the iſſue in tail, is becauſe that all Warranties before the Statute of *Gloceſter*, *cap:* 3. All Warranties which ever diſcend to them, which were Heirs to them that made the Warranty, were bars to the ſame Heirs, to demand any land, except the Warranties which began by Diſſeiſin, and for this the ſaid Statute hath ordained, that the Warranty of the Father ſhall not bar the Son for thoſe lands which come unto him by the Inheritance of the Mother: And the Statute hath not made nor ordained remedy againſt the Warranty that is collaterall to the iſſue in tail: and therefore the Warranty which is collaterall to the iſſue in tail, is yet in force, and ſhall bar the iſſue in tail as it was before the Statute, *Lit: lib.* 3. *cap:* 13. *pla:* 2, 3.

Three Coparceners alien in fee with warranty; and the queſtion was, whether every warranty ſhall be collaterall to the other or not, *&c. Brian* and *Fairfax* held it ſhould, and this was held thirty years then paſt. *Huſſey*, Although it were ſo, it ſerves for nothing, 4 *H:* 7. 18. *quare*, for it ſeems to *Brook*, *Br. Warr.* 56. that the warranty of the one is collaterall to the other two, for the parts of the others; for they cannot claim their proper parts by their Siſter: But as to the part of him which warranted, this is not but lineall as to the other Daughters, if ſhe dye without iſſue, for they may claim the part of their Siſter which made the warranty, by ſuch as made it.

XVI. *What ſhall be ſaid to be a Warranty which begins by Diſſeiſin.*

WArranty which doth begin by Diſſeiſin, was never a bar to the Heir, for that it began by wrong, and is thus: The Son purchaſeth lands, and doth leaſe the ſame to his Father for years, the Father enfeoffeth another in fee, and binds him and his Heirs to warranty, and dies, this warranty ſhall not bind the Son, for he may enter or have an Aſſiſe, becauſe it began by wrong, that is to ſay, by Diſſeiſin, *Lit: lib*:3. *cap*.13.*pl*:2, and 3.

In the ſame manner it is of a Guardian in Knights-ſervice, or Socage, 43 *Ed*:3.7. for if they make a Feoffment with warranty, it is no Bar, *Lit: lib*:3.*cap*:13.*pla*.4. And ſo it is by a Tenement by *Elegit*, Statute-merchant, or Staple, *Litt.lib*:3.*cap*.13.*pl*:3.

If the Father and Son purchaſe lands joyntly, and the Father alieneth the whole to another with warranty, and dieth, this warranty ſhall not bar the Son of the Moyety which belongeth to him of the ſame lands and Tenements, becauſe as to his Moyety the warrant began by Diſſeiſin, *Lit.lib*.3.*cap*.13.*pla*:5. *Touch* agreeth, 22 H.6. 51. contrary by *Herle*, that the Feoffee with warranty ſhall recover the whole, 13 *Ed*: 3. *Fitz. Warranty* 23.

If *A*. be ſeiſed of a houſe, and *F*. who hath no right to enter, claim the houſe and enters, the ſaid *A*. then dwelling in the ſame, in this caſe the Frank-tenement ſhall be adjudged in *A*. But in caſe *F*. enfeoff certain Barretors, and Extortioners in the Country, to have maintenance of them of the ſame houſe, by a Deed of Feoffment with warranty, and *A*. dare not dwell in the houſe, this warranty beginneth by Diſſeiſin, *Litt lib*:3.*cap*.13.*pla*.6. And ſo it is where Diſſeiſin and Feoffment are as it were at one time, *Lit:lib*:3.*cap*:13.*pl*:7. and herewith agreeth, 11 *Ed*: 3. 19 *H*:8.12. by *Fitz-James*, 46 *Ed*:3.6.31 *Ed*:3.*Warr*.22.

XVII. *Where Warranty ſhall not bind but where the ſame is diſcended.*

IF an Anceſtor collaterall make a Feoffment in fee with Warranty, and afterwards the Feoffee make a Leaſe to the Anceſtor back again for life, or in tail, or if he leaſe or give the ſame land for life or in tail, the remainder over, &c. there the Warranty is ſuſpended for the time, but after the Leaſe in tail is extinct, he in reverſion or remainder may bar the Heir in tail by this Warranty: And therefore ſee there, that if the Heir in tail ſue the Uncle or Anceſtor collaterall in his life-time, the Warranty ſhall

not

not ſerve, *Br. Warranty* 91. and herewith agreeth the caſe in *Lit: lib:* 13. *cap:* 13. *pl.* 53. And beſides, where the Anceſtor collaterall deviſeth with warranty, it ſhall not bind, for as much as it taketh not execution, or effect, till after his deſceaſe, and for as much as the Uncle in his life-time was not bound to warrant, ſuch Warranties could not diſcend from him to the Iſſue in tail, *&c.* for nothing can diſcend from the Anceſtor to his Heir, but only the ſame which was in the Anceſtor, *Litt: lib:* 3. *cap.* 13. *pla:* 43.

See the printed Abridgment of Aſſiſe, *fol:* 38. That the Warranty ſhall not be avoided by entry, or action before the Warranty diſcend, for if he might enter, and would not; nor he ſhall not recover before the Warranty diſcend, then when it is diſcended he ſhall be barred, *Br. Warranty* 96. and 34 *Ed:* 3. *Fitz. War.* 69.

XVIII. *Upon whom VVarranty at the Common Law ſhall diſcend.*

THe Warranty in Gavel-kind Lands ſhall not diſcend but upon the eldeſt Son only, and the younger was not barred thereby, but the Aſſiſe was awarded againſt him, which note well, 44 *Ed.* 53. 16. for by *Littleton, lib:* 3. *cap.* 13 *pla:* 26. every Warranty which diſcends, diſcends to him who is Heir to him that made the Warranty by the Common Law, and herewith agreeth, 21 *Ed:* 3. 21. *Br. Warranty* 44. But a Releaſe of the Anceſtor in Gavel-kind is a Bar againſt all men, and 22 *Ed:* 4. 10. and 21. agrees therewith, for a Releaſe ſhall go after the nature of the Land or Inheritance, and ſhall be a Bar to all which may claim the land; *Quod non negatur, Br. Warranty* 69. and ſo it is not a bar of land in *Burrough-Engliſh*, for that ſhall go after the Common Law, whereto agreeth, *Lit.* 3. *cap:* 13. *pl:* 44, 45. ſee 40 *Aſſ:* 22.

It is granted upon an argument in a Writ of Error, that if a man maketh a Feoffment with Warranty, and dieth, his younger Son, or Baſtard may be vouched: but if the Mulier dye without Heir, the Baſtard ſhall not be vouched, for now the Warranty is determined: As where the Lord had been ſeiſed by Eſcheat, and ſo it ſeems that the concluſion of the Inheritance ſhall not ſtay but betwixt the Mulier and the Heir, and not betwixt ſtrangers, 5 *H:* 7. 2.

Note by *Thirn*, 19 *R:* 2. *Fitz. Warranty* 100. That if Tenant in tail alien, and his Son bring a *Formedon*, the Warranty of the Mother, nor any Anceſtor of the Mothers ſide ſhall be a Bar, if the ſame Anceſtor of the Mothers ſide hath an Heir of the Fathers ſide, yet if my Mother releaſeth with warranty to my Diſſeiſor, and dye, I ſhall be barred, *&c.* affirmed by the Court.

Notwithſtanding that by *poſſeſſio fratris, &c.* the Daughter hath the

Land, yet the Warranty ſhall diſcend to the younger Son: but ſhe ſhall be vouched for the poſſeſſion, but the warranty ſhall not diſcend upon him no more then upon the Eſtoppell, whereof the opinion is clear, 35 *H*:6.34.*acc.*

Warranty is no Bar in an Aſſiſe by him who was born before marriage, 32 *Aſſ*:7.

In a *Juris utrum*, the Warranty of the Anceſtor is no Bar, *Newton*, So in a VVrit of Entry *Sine aſſenſu Capituli* by a Dean, or Maſter of a Colledge: But of an Abbot it is clear that it is a good plea, for he is not Heir, 27 *H*:6. *Juris utrum*, ſee Abridgment of the Book of Aſſiſes, and *Fitz. Warranty* 48. agreeth of a Parſon, 34 *Ed*:3.*Warr.* 71. contrary, for there it is holden, if a Parſon be diſſeiſed of Land of the right of his Church the releaſe of his Brother with warranty, ſhall bar him for his life in Aſſiſe.

18 *Ed*:2.*Juris utrum, tamen credo*, that it is not ſo; for if an Abbot or Prior enfeoff me with warranty, I cannot recover in value againſt his Succeſſor, unleſſe the Covent be bound to warranty, and by conſequence the ſame Law of a Parſon of a Church, where the Ordinary and Patron do not confirm.

5 *Ed*:2.*Fitz. Avowry* 207. if the Heir of the Mothers ſide, having by diſcent, alieneth with warranty, and dieth, and this Feoffment be before the Statute, *Mal.* ſaith, That the Heir of the Fathers ſide ſhall be vouched for the Services belonging to him: But *Berry* Juſtice ſaid, that *Conſanguineus ex parte matris ligatus erit*, for he ſhall have the Services, which is adjuged there accordingly.

XIX. *What words make a VVarranty, and how far they ſhall extend.*

A VVrit of *Warrantia Chartæ* was brought in the County of *Hertf.* and the land that was warranted did lye in the Counties of *Hertford* and *Bedford*, and the Plaintiff ſuppoſed in his Count that he was ſued by Aſſiſe before *R. Catlin*, and *A. Brown*, who were Juſtices of Aſſiſe in *Com. Bed. ſed non in Com. Hertf.* and for this it was holden by the Court that it was nothing worth: And alſo the VVarranty was but againſt the VVarrantor, and his Heirs, *Et ideo clare per Curiam*, the writ doth not lye, if the words *Dedi & conceſſi* be not in the Deed, *Dyer fol*:221.*pla*: 17.

This word *Dedi*, comprehends in it ſelf a warranty againſt the Feoffor, and ſo doth not the word *Conceſſi*, *Park* 26.*chap*.31.*E*:1. *Fitch. Feoffment* 118. *Fitz. Nabr. fol*.134.6. that it is a warranty againſt the Feoffor, but not againſt his Heir, unleſſe theſe words, *Ego & hæredes mei omnia prædict. terr. & tenementa, &c. Warrantizabimus, &c.* 3 *H*:7.13. & H.7.1.39 *Ed*:3.26.11 H.4.41.

Alſo

Alſo there is found in divers Deeds theſe words in Latine, *Ego & hæredes mei, &c. Warrantizabimus & imperpetuum defendemus.* VVe are to ſee what effect this word *Defendemus* hath in ſuch Deeds: And it ſeemeth it hath not the effect of VVarranty, nor comprehendeth any cauſe of warranty, for if it ſhould be ſo that it taketh effect, or a cauſe of warranty, then it ſhould be put in ſome Fines levied in the Kings Court, and a man never ſaw that this word *Defendemus* was in a Fine, but only this word *Warrantizabimus*: By which it ſeemeth that this word *Warrantizo*, maketh warrantize, and is the cauſe of warrantize, and none other word in our Law, *Lit: lib: 3. cap. 13. pla: 42.* but in 2 *Ed* 4. 15. The warrantize is where he is ſued, but the word *Defendemus* is to ſave the party, that no ſtranger enter upon him.

Note, that by the beſt opinion, that *Dedi* alone without *Conceſſi* is a good warranty by the Statute *de Bigamis*, which ſpeaks in the end *Ratione proprii feodi*, yet contrary, *De conceſſi tantum, quære* for contrary by *Radford*: And if a man give land with warrantize, the Donor thereby is not bound to warrantize, for he ought to have theſe words, *Quod ipſe & hæredes ſui warrantizabunt* to the Donee, *& hæredibus, &c.* The ſame Law is of a Grant of Rent, *Cum clauſula diſtrictionis* he ſhall not diſtrain without more, *&c.* 11 H. 4. 41.

In a *Præcipe quod reddat* againſt *I.* who vouched *L.* who demanded what he had to bind him to warrantize, *J.* ſhewed a Deed of Feoffment without cauſe of warrantize, and it bound this *L.* by this word *Dedi*, and it was good, ſee the reſt of this caſe, 39 *Ed*: 3. 36. *Fitz. War.* 11. Hereto agreeth the Grant of the Prioreſſe of *S.* in theſe words, *Sciant præſentes & futuri quod ego Prioriſſa, &c. per conſenſum & unanim. totius conventus dedi & conceſſi & hac præſenti carta confirmavi, &c.* and becauſe that *Garrantia* was not in it, *nec aliqua mentio warrantiæ habetur, petit judicium & conſideratum eſt, quod præd. Prioriſſa ei war. &c. Anno* 13 *Ed*: 1. *apud. Weſt. Fitz. war.* 92. doth agree with this, *Anno* 47 H. 3. *Itin. Cornub. Fitz. warr.* 99.

In chartis ubi continetur, Dedi & conceſſi tale Tenementum ſine homagio, vel ſine clauſula quæ continet warrantiam & tenendum de Donatoribus, & hæredibus ſuis per certum ſervitium, concordatum eſt per eoſdem Juſtic. quod donatores & hæred. ſui teneantur ad warrantiam. Ubi autem continetur Dedi & conceſſi, &c. Tenend. & capitalibus Dominis feodi, aut de aliis quam de Feoffatoribus vel hæred. ſuis, nullo ſervitio ſibi retento, ſine homagio vel ſine dicta clauſula, hæred. ſui non teneantur ad warrantiam, ipſe tamen Feoffator in vita ſua ratione doni proprii tenetur warrantizare. Statut. de Bigamis edict, 4 Ed: 1. cap. 7.

In 6 Ed. 2. *Fitz. Voucher* 258. the Deed was thus, *Dedi & conceſſi tali, & hæredibus ſuis tenendum de Capitalibus Dominis*, and the clauſe of warranty was thus, *Eo ego & hæred. mei contra omnes gentes acquietabimus & defendemus imperpetuum. Paſt.* By this Deed we ought not to warant the Land, for by this word *Dedi*, no man is bound to warrantize, but the:

the Feoffor to the Feoffee, but the Feoffee is dead, and you vouched as heir, by which Judgment &c. for the clauſe of warranty doth not ſpecifie any certain perſon, which ought to be warranted, but becauſe the warranty is generall, it was adjudged by *Berry*, that he ſhall warrant.

XX. *In deeds of Feoffment with Warranty, without ſaying what thing, or to whom, how far it ſhall extend.*

BY all the Juſtices, except *Baldwin*, it was agreed, that this word ſhall warrant the ſaid *J. G.* and ſheweth not what thing, the Law ſhall make conſtruction of this word (ſhall) that *W.* ought to warrant the Land of which the communication is made, and for this *Shelley* put the caſe of 6 *Ed.*2, which *Baldwin* denied to be Law. In Dower, a man made a Feoffment to one and his heirs, and by the ſame Deed bound him and his heirs to warranty, *contra omnes Gentes*, and doth not ſhew certainly to whom he ought to warrant, nor how long the warranty ſhould endure, and yet in the book it is ruled that the Feoffee to whom the eſtate was made, had a Fee ſimple in the warranty, as well as he had in the Land, but if the meaning of the warranty appeareth fully by expreſſe words, the warrantie ſhall not extend further. As if a man make a Feofiment in fee, and warrant to the feoffee onely, without ſpeaking of his heirs, there the warranty ſhall be ſaid to be but for life, *quia ſtrictè accipitur*, *Dyer fol.*42 *pla.* 12 and 13. agrees with *Dyer fol.*46. *pla.*2.

See Voucher in *Fitzh.* 258.*per aliquos*, that warranty by *Dedi & conceſſi* doth not hold place, but between the Feoffor and the Feoffee. *Quære inde*, and what by theſe words, *Ego & hæredes mei acquietabimus & defendemus*, and ſaith not, *quid* nor *cui warrantizabunt* and yet held well by the Court, 6 *Ed* 2. *Fitzh* and likewiſe there was a clauſe of warrantize made. *Ego & hæred. mei tenementa prædicta warrantizabimus* and ſaith not, *cui illa warrant.* and yet held good by the Court, *Voucher Fitzh.* 262. 12 *Ed.*2. 6 *Ed* 2. *Brook Warranty* 8. whereto agreeth 14 *H.*4.13. by *Hanck.* this ſhall have relation to the words of the deed before, to the Feoffee, his heirs &c. and ſo is the form in a Fine, and ſo it is ruled *Tempore* 2. *Quod omnes Juſticiarii affirmaverunt*, that the warranty was good by that manner, and *Perkins* 49. agreeth thereto

See eſtates 18. that where a man makes a Feoffment to two, *& hæredibus*, without *ſuis*, that for the uncertainty, this is not good, and yet by *Keble* and *Genney* Juſtices, a man enfeoffes another in Fee, and warrants the Land, *contra omnes gentes*, and ſaith not, to whom he warrants it, yet this is a good warranty to the Feoffee, for this ſhal follow the words of the Feoffment, otherwiſe it ſeemeth, if it were made to two, *ut ſupra* 22 *Ed.*4.16.

What

What perſons by their warranty ſhall barre Others.

XXI. *Warranty of Tenant in Dower, and of the mother.*

IF a man that is an inheritor take a wife, who have a ſon between them, and the father dieth, and the ſon entreth into the Land and endowes his mother, and after the mother aliens this which ſhe had in her Dower to another in fee with warrantie accordingly, and afterwards dies, and the warranty deſcends to the ſon, now the ſon by the Common Law ſhall be barred to demand the ſame Land, becauſe of the ſaid warranty, and ſuch Collaterall warranty of Tenant in Dower, had not any remedy by any Statute before that *Littleton* wrote his book, *Lit. lib.* 3.*cap.*13.*pla.*33. herewith agreeeth 22 *Aſſ. pa.*37.*Brook warranty* 45. where the mother of the plaintiff, being Tenant in Dower, leaſed the Land to her villain with warranty, and there becauſe that he did not ſet forth, that the Tenant in Dower died during the Seiſin of the Villain, ſo that the Collaterall warranty might deſcend upon this poſſeſſion, therefore the aſſiſe was awarded, and by 31 H. 8. *Br. VVar.* 79. If the Husband and wife alien Land of which ſhe is dowable, there to have Collaterall warranty, it is good to have the warranty of the wife againſt her and her heirs, and then if ſhe hath iſſue by the Husband, and ſhe and the husband die, the warranty ſhall be collaterall to the iſſue, becauſe the Land comes by the father, and not by the Mother.

In an aſſiſe *de mort danceſtor*, of the Seiſin of his father, the warranty of the mother was pleaded in bar, and this was adjudged a good bar, without ſaying that the demandant had aſſets by deſcent &c. 12 *Aſſ.P.*9. *Fitzh.warranty* 64. So *temp. Ed*:1. *Fitzh. warranty* 86: in a Writ of Right and demand of Seiſin of *R.* his anceſtor, the Tenant pleaded the feoffment with warranty of one *Alice* the wife of this *R*: and anceſtor of this demandant, whoſe heir the demandant is. *VVar*: the Statute of *Gloceſter* ordains, that the heir ſhall not be barred, if the husband alien the Right of his vvife, nor by conſequence the heir, if the wife alien the right of her husband, and the Statute grants a Writ in *caſu præviſo*, and by equity *in conſimili caſu*, and ſo it ſhall be here, *Ber*: *in conſimili caſu*, when a man is to have by Writ, and not by plea pleaded. But the opinion of ſome is, that as great miſchief is in the one caſe, as the other, but becauſe the Statute now makes mention of it, we can do no more then the Statute vvilleth, by vvhich the demandant vvas non-ſuit by the advice of his Councell.

If tenant in dovver alieneth vvith Warrantize, her heir being vvithin age, and alſo at the time that the vvarranty deſcended, the heir may enter,

but

but if he vvere at full age at the time of the deſcent of the vvarrantize, and entreth not in the life of the Tenant in Dovver, there peradventure the heir ſhall be barred by ſuch vvarranty, becauſe it ſhall be accompted his folly, that he being of full age entred not in the life time of the Tenant in Dovver, *Littleton lib*:3:*cap* 13.*pla*:35.

But novv by the Statute made 11 H.7.*cap*.20. it is ordained if any Woman diſcontinue, alien, releaſe or confirm, vvith vvarranty, any lands, or tenements, vvhich ſhe held in Dovver, for term of life, or in tail of the Grant of her former husband, or his anceſtors, or of any other ſeiſed to the uſe of her former husband, or of his anceſtors, that all ſuch warranty ſhall be void, and that it ſhall be lawfull for him who ſhall have thoſe lands after the death of that woman, to enter, *Litt.lib*.3. *cap*. 13.*pla*.36.

By *Thirning*, if Tenant in tail alien, and his ſon bring a Formedon, that the warranty of the mother, nor any anceſtor of the mothers ſide ſhall bee a Barre, if the ſame Anceſtor of the Mothers ſide hath an Heir of the fathers ſide, becauſe the anceſtor of the fathers ſide is more worthy, and more near, and alſo the deſcent cometh of the fathers ſide, yet if I be diſſeiſed, and my mother releaſe with warratny and die, I ſhall be barred, and this was affirmed by the Court, *Quare* the diverſity, *P*.19 *R*.2.*Fitzh*.*war*.100.

See the Statute of *Gloceſter cap*.8. That if a woman ſell or give lands or tenements, which ſhe holds in Dower, the heir ſhall recover by writ of entrie.

In an Aſſiſe *de mortdanceſtor*, of the Seiſin of his father, the warranty of his mother was pleaded in Bar &c. and this was adjudged a good bar, without alledging that the demandant had aſſets by deſcent &c. 12 *Aſſ*. *pa*.9.

XXII. *Warrantize by Tenant by the Courteſie, or ſeiſed in Right of his wife, and the expoſition of the Statute of* Glouc. *cap*.4.

NOte, that *Littleton*, *lib* 3 *cap*. 13.*pla*.37. ſaith, that ſome thought, if the husband levy a Fine of the lands of his wife with warranty, that this warranty is a bar, becauſe the Statute ſaith, that the alienation of the husband with warranty, where no Fine is levied, it ſhall not be a bar without aſſets, and ſo, he ſaid, was the opinion of Sir *Richard Newton*, and other Juſtices in their times, and further, that the warranty of the husband, by the Releaſe where no demiſe, nor alienation was made, ſhall bar, becauſe the Statute ſpeaketh of a demiſe, as if the husband by the releaſe, where the demiſe nor alienation was made, ſhall be a bar, becauſe the Statute ſpeaks of a demiſe, as if the husband releaſe to the diſſeiſor,

ſeiſor, or to one that is in by the diſſeiſor &c. and ſome ſay that the words (where no Fine is levied) ſhall be underſtood where no Fine is levied by the husband and wife &c. 14 *Ed.*4 Fitz. *warranty* 5. *Lit. lib.*3. *cap.*13 *pl.*37:38.39,40. and *pl.*41. theſe words, where the heir demandeth the heritage or marriage of his mother, this word (or) is a diſjunctive, and is as much as to ſay, if the heir demand the heritage of his mother, that is, the Tenements which his mother had in fee ſimple, by deſcent or by purchaſe, or if the heir demand the marriage of his mother, that is to ſay, the Tenements, which were given to his mother in frankmar-riage.

In a formedon in deſcender of a deed made to *Agnes*, his Grandmother. *Scroop*, one *W.* your Grandfather, whoſe heir you are, enfeoffed one *J.* in tail with warrantize, and we are heir to *J.* judgment &c. *Ald.* after the death of *Agnes*, this *W.* held by the law of *England*, judgment, if by his deed. *Scroop*, The Statute of *Gloceſter* mentions not this Writ, but the writs of *Ayel*, *Beſayel*, and Coſinage. *Ber.* the Statute helps him in everie Writ, where the Husband aliens the right of his wife &c. which hold &c. and if he cannot put all the caſes, yet he will put a caſe more hard, and by ſo much intend that leſſe is remedied, and for this if the heir bring his Writ of Right, he ſhall as well be releeved there, as in the writ which is given him by the Statute, *viz.* the *Mortdanceſtor*, for which &c. *Scrope*, he had aſſets by deſcent, whereupon at iſſue, and others *è cont. &c.* 11 *Ed.*2. Fitzh. *war.* 83. but 5 *Ed.* 4. *Br. warr.* 95. If Tenant by the Courteſie alien with warranty, and die, and the heir bring his writ of Right, he ſhall be barred by the warranty, although no aſſets be deſcended, contrary, if he bring his action poſſeſſory, *ſecundum Statutum, Glouc. cap.*3. & 8. *Ed* 2. Fitz. *Warranty* 81. *non compos mentis* was brought of land aliened by the father, Tenant by the courteſie, and allowed good.

In a Writ of Right of the Seiſin of *Alice* his mother, the Tenant pleaded a Releaſe, and quite claim with warranty made to him by the father of the demandant, whoſe heir the Demandant is, Judgment &c. *Warr.* We have nothing by deſcent &c. Judgment whether by this deed, *Aſſ.* This deed was made before the Statute of *Glouc.* and ſo bars at the Common Law, without aſſets; therefore by the Court he took nothing by his writ, *Ed.*1. *Fitz. warranty* 87. and 7 *Ed.* 3. 52. *Fitz. warranty* 47. where the Tenant by the courteſie acknowledged a Fine with warranty, and no aſſets deſcended to the heir, and *per Curiam*, if the Tenements were compriſed within the Fine, he is barred, and the reaſon is, becauſe the Fine was levied before the Statute of *Glouc.* whereto agreeth 31 *Ed.*1. *Fitz. warranty* 95.

At the Common Law, the warranty of Tenant by the courteſie was Collaterall, and is ſo now, as I conceive, but it ſhall not be a Bar in *Mortdanceſtor*, *Ayel*, or Coſinage, unleſſe aſſets in fee deſcend *in facto & re*, where before, the aſſets were but intended in Law &c. and this Statute of *Glouc.* is taken ſtrictly, for I believe the Law at this day to be, that if

the heir enter not upon the alienee in *vita patris*, he ſhall be bound and barred from his entrie by the warranty, and ſo where the Father diſſeiſed releaſeth with warranty, and dieth, the heir ſhall be barred without aſſets, of action and Entrie alſo, becauſe it is no alienation: alſo in the laſt point of the Statute of *Glouc.* of alienation *in vita uxoris* of the heritage or mariage of his wife, if he alien the purchaſe of his wife with warranty, he is out of the Statute, becauſe heritage or marriage, ſhall not be intended purchaſe, *& pro hoc vide magna Charta cap. 7. de maritagio & hereditate* of the wife, and it was made to reſtrain the liberty of Tenant by the courteſie, *Dyer fol.* 148. *pla.* 78.

XXII. *VVarranty of Donee in Tail.*

IT ſeems by the Book of 41 *Ed.* 3. *Fitz. Warranty* 16. if Donee in Tail make a Feoffment with warranty, and dieth without iſſue, the donor ſhall be barred, becauſe before the Statute was made, that at the common Law after iſſue, the Donor who was a ſtranger ſhall be barred, but in the principall caſe he is privy in blood to the Donee, and therefore he is out of the miſchief of the Statute, and ſo out of the compaſſe; and *Finch* ſaith, that he hath heard *Herl*, who was at the making of the Statute, who expreſſed the miſchief for which it was made, 15 *Ed.* 3. *Warranty* 26. it is doubted, and adjourned, 10 *Ed.* 3. 14. *doubted.*

27 *Ed.* 3. 83. In a Formedon in Reverter, the deed of the anceſtor of the Demandant was pleaded in Bar, which anceſtor was Tenant in Tail, it is no bar againſt the Donor, for the Statute recites the miſchief, *ſcil. Quod donatores fuerint excluſi de reverſionibus huc uſque*, and the heirs diſinherited, ſo to reſtrain ſuch a point was the Statute made, *Quod voluntas Donatoris obſervetur* &c. 6 *Ed.* 3. 56. *Herl* ſaith, that he knows the Law to be, that he in Reverſion ſhall not be barred without aſſets.

7 *Ed.* 3. The opinion was, that if Land be given in Tail, the Remainder to another in fee, he in Remainder made a Feoffment with warranty, and died, and his heir was barred in a Formedon in Remainder, becauſe that the Statute, *Quod voluntas donatoris obſervetur*, and as to the Reverter or deſcender, but not of him in remainder: and *Schard* ſaid, if Tenant in Tail in remainder make a Feoffment with warranty, that this ſhall bar the iſſue, for he ſaid, that he in remainder, what eſtate ſoever he demands, is not helped by the Statute, 4 *Ed.* 3. 56.

XXIII. *Warranty of Guardian in Chivalry, or in Socage.*

IF Guardian in Chivalry, or Guardian in ſocage make a Feoffment in Fee, or in Tail, or for life with warranty &c. ſuch warranty ſhall not be Bars to the heir to whom the Lands ſhall be deſcended, becauſe it begins by diſſeiſin, *Littl. lib.* 3. *cap.* 13. *plea* 4. whereto agrees *H.* 16. *Ed.* 3. *Fitz. Warranty* 20. and ſo of a Guardian for nurture, it is by diſſeiſin, 43 *Ed.* 3. 7.

XXIV. *Warranty of an Infant.*

WArranty of an Infant is void, and yet if an infant and a man of full age make warranty, both ſhall be vouched, and the age being found, it ſeems that the other ſhall warrant the whole, 48 *Ed.* 3. 12. ſee *Br. Tit. Baron & feme.*

XXV. *Warranty of a Feme ſole.*

Communis opinio fuit, That if a feme ſole be bound to warrant Land to me, and *A. B.* hath cauſe of action thereof, and he take the ſame woman to wife, and afterwards ſue me, he ſhall be bound during the coverture, for I may rebut him by the warranty which I have of the wife of the Demandant; *Quere*, and ſuch a Caſe was *Mich* 13. *Ed.* 3. *tamen alibi dicitur*, that if he to whom the warranty was made, had married the woman and had been ſued during the Coverture, the warranty is loſt for ever, and if the husband grant in an action, that the warranty is by reaſon of his wife, and ſave not his action by proteſtation, he ſhall by this be barred in an action taken of his own ſeiſin, if the wife be yet alive, 13 *Aſſ. P.* 10. *Br. warranty* 43. & 70.

XXVI. *Warranty of not ſound memory.*

IN Entry, ſuppoſing that he hath not entred, but by *H.* who hath wrongfully diſſeiſed *W.* his brother, the Tenant ſaid, that *H.* is the father of the Demandant, whoſe heir the demandant is, which *H.* enfeoffed the Tenant with warranty, and demands Judgment whether againſt &c. the Demandant ſaith, that *H.* was not of ſound memory at the time &c. to which the Tenant was compelled to anſwer, whereupon he ſaith,

that he was of ſound memory, iſſue taken &c. *M.*8 *E.*2. *Fitzh. Warranty* 80.

XXVII. Warranty of an Aſſigne, or the heir of the Aſſigne, or the Aſſign of the heir in tail, or the Aſſigne of the Aſſign, and who ſhall be ſayd to be the Aſſign of the Tenant in tail to rebutt, &c.

IN an Aſſiſe the tenant rebutted by the warranty of the Anceſtor of the Plaintiff, whoſe heir, *&c.* and he was not ſuffered without ſhewing the deed of aſſignment, no more then he could vouch as Aſſign. *Tamen* 42 *Ed.*3.19. He may rebut by *a que* eſtate, without being put to ſhew how he had his eſtate, 22 *Aſſ. pa.* 88. *Br. warranty* 47. *tit. Formedon* 15. That where a man gave land in tail, and did warrant the land to him, and his heirs and Aſſignes, and he did alien in fee, and died without iſſue, this warranty ſhall be a bar in a Formedon in Reverter, 7 *E.*3.46: *E*, 3 4. and if Tenant in tail with warranty enfeoff his ſon being of full age, he ſhall not deraign the warranty as heir, but as Aſſigne, otherwiſe it is if within age, then as heir, 40 *E.*3.44.

19 *Ed.*2. *Fitzh. warranty* 84. In a Formedon in Deſcender againſt *T.* upon a grant to one *H.* father of the Demandant, whoſe heir the Demandant is. *Wilby*, one *B.* your Grandfather gave theſe lands to one *R.* and bound him and his heirs, and to his Aſſignes, to *R.* his heirs and Aſſignes, and we ſay that *R.* enfeoffed our Father, who is heir &c. ſo if we were ſued of a ſtranger, you are bound to warrant Judgment whether againſt the Deed, and we are heir of the Aſſigne of *R. Schard*, the heir of the Aſſigne is not named in the warrantize. *Stone*, The right which was in the one diſcends to the other, and ſo *Schard* pleaded another plea.

A gift in tail and warranty to the heirs and Aſſignes, and yet the heir in tail ſhall be helped by this, *Per Cannt* and *Herl, contra per Trew* 7 *E.*3 34. *Fitz. warranty* 44.

Note, that the Aſſigne of an Aſſign in an Aſſiſe of Novel Diſſeiſin did rely upon the warranty of the Anceſtor of the plaintiff in Barr, and *Shard*, notwithſtanding awarded the Aſſiſe, 24 *E* 3. 32. *Fitzh: warranty* 40. but otherwiſe by the Court, and that the Aſſigne of an Aſſign ſhall rebut, by force of the warranty, him who made the warranty and his heirs, 38 *E:*3.21. *Fitzh:* 10. and 12 *Ed.*2. *Fitzh. voucher* 263. Aſſigne of an Aſſign, vouched the firſt feoffor to warranty, and granted by the Court.

14 *E:*3. *Fitzh. warranty* 33. *Per Schard*, Many men conceive that the Aſſigne of the heir ſhall have as much advantage of the Warranty, as the Aſſigne of the Aſſign of the heir, by deed, which contains warranty to them, and to their heirs and Aſſignes, in a Formedon, 10 *Ed.*3. 9. Where the

the Aſſigne of the heir had advantage of the barr by the warranty, &c. *vi:7.E.3.* agrees. and ſee 19 *E.2.Termino M.* that the heir of the Aſſigne pleaded warranty made to a man, and to his heirs and Aſſigns, and held a good plea, whereupon the Plaintiff was non-ſuit. 14 *E.3.Fitz warranty* 33. agreed *Anno* 13 *E.1. Fitzh:Warranty* 93.

Scire facias out of a fine by which *I.* acknowledged the Tenements to *W.* for life, the Remainder to *P.* in tail, and if he died without heir, &c. the Remainder to *C.* and to his heirs &c. and the right heir of *C.* ſued this Writ &c. *Mowbray*, One *Beatrice* your Anceſtor &c. enfeoffed *I. S.* in fee with warranty, and bound him &c. to warranty &c. which *I.* enfeoffed one *T.* and took back the eſtate to him and his wife againſt whom this Writ is brought. *Seaton*, This *B.* was iſſue in tail, and you ſurmiſe not that we have aſſets by diſcent, neither are you they to whom the warranty can extend, for the wife is the Aſſigne of an Aſſigne&c. and becauſe that the Husband was privy to the Warranty, and he and his Wife may vouch the Husband, ſo by Voucher to come to Warranty, it ſeemed to the Court that he might plead, wherupon *Stone* ſaw the opinion of the Court and imparled, &c. 16 E:3.56. *Fitzh. warr.* 98.

XXVIII. *Warranty of the halfe blood.*

IF Tenant in Tail hath iſſue two daughters by ſeverall Venters, and dies, and the Daughters enter, and a ſtranger diſſeiſeth them of the Tenements, and one of them releaſeth to the Diſſeiſor all her right, and binds her and her heirs to warranty, and dies without iſſue, in this caſe the ſiſter who ſurviveth may well enter, and out of the diſſeiſor of all the Tenements, becauſe that ſuch warranty is not a diſcontinuance, nor a collaterall warranty to the ſiſter which ſurviveth, becauſe they are of the halfe blood, and one cannot be heir to the other according to the courſe of the Common-Law, but otherwiſe it is, where there are Daughters of Tenant in taile by one and the ſame venter, *Littleton lib:3: cap.13.pla.* 46.

XXIX. *Warranty of him which is in by eſtate of another.*

SCire facias out of a fine againſt a tenant, the husband and his wife were received for the default of the Tenant, and ſhewed to the Court how the husband and wife did leaſe to the Tenant the Tenements for term of life, ſaving the Reverſion to them, and to the heirs of the wife, and ſhewed the Deed of the Anceſtors of the Demandant, with warranty to the wife, to him. and to his heirs of his body, ſaving the Reverſion, &c. and demanded judgment whether againſt &c. *Belknap*, By the Deed ſhewed, the

the wife hath nothing but the fee tail; and ſhe hath reſerved the reverſion of the fee, of which ſhee is now received, whereupon judgment, if to this warranty, which extends it ſelf to another Eſtate, the Law will put us to anſwer. *Finch*. If ſhe were to dereigne the warranty, ſhe ſhall not be warranted of another eſtate, but ſhe may counterplead the warranty, but in this caſe of Rebutter, not, *M.45.E.3.18.*

Note that *Hill* ſaid, If Tenant in Dower alien in fee with warranty, and a writ be brought in the life time of the Tenant in Dower, and before the time of the plea, the wife dye, by her death, and her warranty the heir ſhalbe rebutted. *Scrope* Juſtice ſayd, the Law was otherwiſe, for he might alledge, that he took his freſh ſuit upon the alienation living the Tenant in Dower, he ſhall not be rebutted by the Warranty of the Tenant in Dower after her death &c. 3 *E.3. Itin North F.*

Formedon in Diſcender brought by *W* againſt one *C.* upon a Deed made to *B.* and *C.* his wife. *Belknap*, One *R.* Great Grand-father of *W.* now Demandant, gave the lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C.* dyed, and *B* the husband ſurvived, whoſe eſtate the Tenant hath, Judgment, whether againſt the Deed of his Anceſtor, &c. *Cheld*, This *R.* is the ſame perſon which we have ſuppoſed who gave in fee tail to the ſame *B.* and *C.* and ſo his plea contrary to our writ, for which we do aver our Writ. *Belknap*, I rely only upon the warranty: *Cheld*, ſhew me then how you have his Eſtate. *Th.* The greateſt ſtranger in the world ſhall be received to bar you by the warranty, without ſhewing how he hath his eſtate; but in caſe of voucher, he ſhal not be received, and this I would have you anſwer. *Cheld* Not the Deed of *R.* our Anceſtrell iſſue, and others of the contrary, *T.* 42 *E.3.19.*

Warranty of Tenant for life.

WHere the Tenant for life doth alien with warranty &c. and dieth, and the warranty diſcends to him who hath the reverſion, or the Remainder, they ſhall be barred by this Warranty, *Littleton lib.3. cap. 13.pl.34.*

XXX. *Warranty of Tenant by Statute Merchant, or Staple, or* Elegit.

IF Tenant by *Elegit*, Tenant by Statute Merchant, or Tenant by Statute Staple, make a feoffment in fee with Warranty, this ſhall not barr the heir that ought to have the land, becauſe ſuch warranties begun by diſſeiſin, *Litt. lib.3. cap.13. pla.3.*

So

So in an Aſſiſe, if he claim by *Elegit*, or by Statute Merchant, the warranty is no barr, otherwiſe it is if he claim by Inheritance, 15 *H.*7.9.

What perſons ſhall be barred by Warranty.

XXXI. *VVhether warranty ſhall bar the King.*

IT was found by Office, that King *H.* great Grandfather of the King that now is, was ſeiſed of the Mannor of *C.* and the Mannor granted unto *Edward*, Earl of *Cornwall*, in tail, ſaving the Reverſion, and it was found that *Edward* died without heir of his body, whereby the Mannor reverted to the King, whereupon came *M: Cheſelden*, wife of *W. Cheſelden*, and ſaith, that not acknowledging the intail *&c.* the ſayd *Edw.* Earl of *Cornwall* gave the ſame Mannor by this Deed, which is here with warranty to one *William Chedwich*, to him and his heirs for ever, in exchange for another Mannor, which the ſaid *W.* granted to the ſayd *Edward*, and his heirs, and ſaith, that the ſayd *Edward* was Anceſtor of the ſaid *Edward*, Grandfather of the King, That is to ſay, Coſin, and ſheweth how Coſin, &c. and ſaith that Aſſets did diſcend to the ſayd *Edward*, Grandfather to the King that now is, by the ſame *Edward* in fee ſimple, that is to ſay; the Mannors of *A.B.* and *C.* in the County of *S.* Judgement, whether againſt the ſaid Deed which comprehends a Warranty, and the ſaid Warranty diſcended to the Grandfather of the King, whereby the right of the Reverſion was extinct in the perſon of the ſayd *Edward*, Grand father of the King, &c. he ought to be impeached, and ſhew how he was in of the eſtate of *VV. Chend. Belknap*, Seeing that you do not deny that *Edw.* who aliened had but a fee tail, ſo the ſaid alienation was to the diſinheritance of the King, who prayed Judgment, *&c.* and after ſearch made, it was found upon record, that *Edward* died ſeiſed of the Mannors in fee ſimple, which deſcended unto *Edward* Grandfather of the King that now is, as it was alledged by *Margery*, for which *Margery* had reſtitution of the ſaid Mannors, *&c.* 45 *Aſſ: P.* 6.

And 6 *E* 3.56. *Fitzh. tit. warranty* 61. In a *Quare impedit* by the Earl of *Cornwall*, againſt the Biſhop of *R. T.* late Biſhop of *R.* Predeceſſor, *&c.* did grant and releaſe all the right which he had in the Advowſon of S. B. to the Earl of *C.* and his heirs, and in exchange the Earl of *C.* did grant an Acre of Land in ſuch a place, and the Advowſon of the the Church, which is now in demand; and two other Advowſons to the Biſhop of *R:* and his Succeſſors, and did bind him and his heirs to warranty, and the Warranty diſcended to the King that now is, who hath aſſets

by

by diſcent: and by *Herle*, If the King hath by diſcent, this ſhall bind him, wherefore you ought to ſue a Writ out of the Chancery to ſearch in the Records of the Exchequer, if he had aſſets, and after the plaintiff was non-ſuit, and the Biſhop had a writ to the Biſhop, and 39 *E.* 3. 11. *Fitzh Ayd De Roy* 52. The King did grant Ayd by adviſe of the Court.

A man ſhall recover in value againſt the King by petition after ayd had of the King, if he had warranty with clauſe of recompence, but his clauſe ought to be entred upon the Ayd prayer of the King, otherwiſe he ſhall not recover in value by petition, 9 *H.*6.4. and 9 *H.*6. 56. In a *Quare Impedit*, it was doubted whether the word *Warranty*, were ſufficient to recover in value againſt the King, without this word (*In recompence*) *Per Babington. Quare*, for *Videtur*, that he ſhould, and by *Mertin*, an Advowſon with warranty is good Aſſets.

Upon a *Scire facias* if the King grant land unto me and to my heirs, and grants that if I be ſued or loſe in any manner, (unleſs by mine own act) that the King will render me in value other land, this is a good warranty againſt the King 39 *E.* 3. 12. *writ of warranty* 37.

In an Aſſiſe of the office of keeper of *Woodſtock* Park, and the office of Gate-keeper for the ſame Parke, of the grant of the King for term of life, the Defendant made his Title by another grant made before by King *Edward* the fourth, by this word *Conceſſimus*, and prayed Ayd of the King, *Et Juſticiarij negaverunt auxilium*, but the Reporter held that he ſhould have ayd by theſe words, *In ſtatuto de Bigamis. viz.* If the King ſhal ratifie the act of any man in another mans eſtate, or ſhall grant any thing to any man, &c. it ſhall not be ſuperſeded, but when afterwards this ſhall be made known to the King, it ſhall without delay be proceeded in, and this very word (*Conceſſimus*) hath as much force as *Dedimus & Conceſſimus*, for the Statute ſhall be taken diſjunctively and not copulatively, which is not ſo, for the ſtatute *De Bigamis eſt*, *Dedimus & Conceſſimus*, 2 *H.*7 :7.

XXXII. *Whether warranty ſhall bar him in Remainder.*

IN a Formedon in Remainder, the Demandant was barred by warranty of the Uncle, 7 *E.*3.50. *Fitzh. warranty* 45. and 4 *E.*2. 56. *Fitz. warranty* 58. In a Formedon in Remainder, the Demandant was barred by the Feoffment with warranty of the Donee in tail.

By *Finch*, If there be Tenant in taile, the Remainder to *E.* in tail, the Remainder to *C.* in tail. and the Tenant in taile dyeth without iſſue, *E.* in the firſt Remainder makes a feoffment with warranty, and hath iſſue and dyeth, and after the iſſue dyes without iſſue, and *C.* in the ſecond Remainder be heir to him, he ſhall be barred by this Warranty, although the iſſue of *E.* hath nothing by diſcent, ſo that he was not barrable; but Serjeant *Kirton* was of a contrary opinion.

XXXIII. *Whether*

XXXIII. *Whether Warranty ſhall bar him in Reverter.*

IN a Formedon in Reverter, The deed of the Tenant in tail, Anceſtor of the Demandant was pleaded in barr, and the Plaintiff durſt not demur, but traverſed the Deed, *&c.* 27 E.3.83. *Fitzh. Warranty* 42. whereto *Herle* agreeth, 7 E 3.34. *Fitzh. warranty* 44. But 14 E. 3. and 5. the opinion of *Herle* was, that the warranty of Tenant in tail, &c. was no bar to the donor, becauſe the Statute rehearſeth the miſcheif, that is to ſay, *Quod donatores fuerint excluſi de reverſionibus huc uſque*, and the heirs diſinherited, ſo to reſtrain ſuch point was the ſtatute, *De donis conditionalibus*, made, *Quod voluntas donatoris de cetero obſervetur, &c.*

In a Formedon in Reverter, and the count was, that *I.* his Anceſtor, granted to one *T*: in tail, who dyed without heir. *Stouff*, One *T*. Uncle of the Demandant whoſe heir he is, enfeoffed the Father of the Tenant with warranty, whoſe heir the Tenant is, and demanded judgment whether *&c.* *Scot*, This *T*. is the ſame perſon to whom this gift in tail was made, who aliened in eſtrepement by the ſtatute againſt them in Reverſion, as againſt them in the Diſcender, &c. *Stone*, Then you confeſs that this is the deed of your Anceſtor: *Parnel*, Yes. *Stone*, Now is the whole upon one Judgment, 10 E.3 14. *Fitzh. warranty* 53. *vide* 31 E.3. *Fitz. warranty* 28.

XXXIV. *VVhether warranty ſhall bar the Heir in Burrough Engliſh.*

VVArranty is no bar but to the eleſt, although it be of land in Gavelkind, or Burrough Engliſh, for it ſhall follow the order of the Common Law, but a releaſe ſhall follow the nature of the Land or inheritance, and ſhall be a bar to all which may claim the land, which is not denyed, and thereto agreeth, 22 Ed 4.10: 21 Ed.3.21. *Br. warranty* 69. and by *Littleton fol.*166. *pla.*44. collaterall warranty of ſuch Tenements where the warranty diſcends upon the eldeſt ſon, *&c.* this ſhall not barr the youngeſt ſon, who by ſuch cuſtome inherits, and by him, if tenant in tail of Tenements in Burrough Engliſh, diſcontinue with warranty, *&c.* and hath iſſue two ſons, and dieth ſeiſed of other lands or Tenements in the ſame Burrough in fee ſimple to the value or more of the Tenement intailed, *&c.* yet the younger ſon ſhall have his Formedon of the Tenements tailed, and ſhall not be barred by the Warranty of his Father, though Aſſets diſcended unto him in fee ſimple from the ſame Father, according to the cuſtome; becauſe that the warrantize doth diſcend upon the elder brother who is in full life; *&c.* and not upon the youngeſt ſon.

Hereto agreeth, *H.* 13.*H*,4. *Fitzherbert Warranty* 94. Where a Formedon

medon in the Diſcender was brought by one *R.* according to the cuſtome of the Town, that the Lands and Tenements in that town the youngeſt ſon ſhould inherit, and ſo it was there declared and not the Writ. *Screne*, he declares that hee is the youngeſt ſon; and the Writ makes no mention therof; Judgment, *Et non allocatur*, & collaterall warranty was alledged, & alſo aſſets by diſcent, yet by the Court, he ſhall not be barred by this warranty which is at the common Law, and diſcended upon him who ſhall inherit by the Common Law, &c. by which the Tenant waived his barr and vouched &c.

XXXV. *VVhether warranty barr the Heir in Gavelkind.*

IN the ſame manner it is of Tenements in the County of *Kent*, which are called Gavelkind, which Tenements are partable among brethren, *&c.* according to the cuſtome. For if any ſuch warranty be made by his Anceſtor, ſuch warranty ſhall diſcend only to the heir, who is heir at the Common Law, that is to ſay, to the elder brother according to the courſe of the Common Law, and not to all the heirs which are heirs of ſuch Tements according to the cuſtome, *Litt. fol.* 167. *pla* 45. (agreeing 22 *E.* 4. 10) 21 *Ed.* 3. 21. *Bro. Warranty* 69. and that the warranty in Gavelkind diſcends only upon him who is heir at the Common Law, but a releaſe of the Anceſtor is a bar againſt them all, 21 *E.* 21. *Br. warranty* 44. agreeth hereto, 44 *E.* 3. 16. and 17 E. 3. 61 *Fitzh. warranty* 22. and 24. *Ed.* 3. 66. *Fitzh. warranty* 50.

XXXVI. *VVhether warranty barrs the halfe blood.*

IF Tenant in tail hath iſſue two daughters by diverſe venters, and dieth; and the Daughters enter, and a ſtranger doth diſſeiſe them of the ſame Tenements, and the one of them doth releaſe by his Deed to the Diſſeiſor all his right, and binds him and his heirs to warranty, and dyeth without iſſue, in this caſe, the ſiſter which ſurviveth may well enter and out the Diſſeiſor of all the Tenements, becauſe ſuch warranty is no diſcontinuance nor collaterall warranty to the ſiſter who ſurvives, becauſe they are of the halfe blood, and the one cannot be heir to the other, according to the courſe of the Common Law: But otherwiſe it is where there are Daughters of Tenant in tail by the ſame venter, *Litt. fol.* 167. *pla.* 46.

XXXVII. *VVhether*

XXXVII. *Whether he that is not heir ſhall be barred.*

IF Tenant in tail to him and his heirs males hath iſſue two ſons, and diſcontinueth, and the Anceſtor collaterall releaſeth with warranty and dyeth, the father who is Tenant in tail dyeth, and the elder ſon hath iſſue a daughter and dyeth, the younger ſon ſhall not have a Formedon, by *Newton* and *Aſchough*, but the tail is utterly anciented and extinct, and the elder barred thereof for ever, and by the ſame reaſon the younger who claimes by him, and if the heir bring a Formedon, and the Tenant hath warranty collaterall to plead, and he will not plead it, by which he recovers; yet the warranty is not taken away, but he ſhall have a Writ of Right, and the grantee of a Rent, ſhall falſifie this Recovery, *Per Paſton*, in an Aſſiſe, *H. 9. H. 6. 59.*

In an Aſſiſe by two brethren, the Tenant ſaith that their Father enfeoffed him with warranty, and the land was Gavelkind, and demands judgment, if an Aſſiſe &c. *Fitzh.* This is no plea, and after the Aſſiſe was awarded againſt the younger, the elder anſwered to the Deed, 44 E 3.17 and by *Pigot*, they all ſhall vouch by force of warranty made to their father as heirs, and the feoffment of their father is a good bar to them in a Writ of entry, upon diſſeiſin, 22 E.4.10.

But 17 E.3.61- *Fitzh. warranty* 22. and 22 E.2.10. *Fitzh. warranty* 7. The uncle of the heirs in Gavelkind doth enfeoff with warranty and dyeth, and the warranty lyeth againſt the elder only.

XXXVIII. *Whether warranty ſhall bar a feme Covert.*

NOte, If the husband diſcontinue the right of his wife, and the Anceſtor collaterall of the Wife, releaſeth with warranty and dyeth, to whom the wife is heir, and after the husband dyeth, the wife ſhall be barred in *Cui in vita*, by this warranty, notwithſtanding the Coverture, becauſe ſhe is put to her Action by the diſcontinuance; for coverture cannot avoid warranty, but where the entry of the wife is lawfull, which is not upon a Diſcontinuance, 33 *H.* 8. *Brooke warranty* 84. and 3 *H.* 7.9.

In an Action of Treſpaſs collaterall, warranty was pleaded againſt a woman in Remainder in taile who was covert, *Tempore Diſcenſus inde*, and it was held a good bar in the Action, by reaſon it was made upon diſcontinuance, for it is a ſufficient bar in treſpaſs without the warranty, *Tamen dubitatur*, if ſuch warranty ſo diſcended, be a ſufficient bar in a Formedon in Remainder brought by the woman, the reaſon ſeems to be, for that the warranty cannot properly be avoided but by entry, and ſhe can-

not enter upon a diſcontinuance, and then it ſeems that this is a barr, notwithſtanding the Coverture, 35 *H.*6.63. By *Priſot*, Nonage nor Coverture will not ſerve to defeat a collaterall warranty, but where his entry is lawfull, and 32 E: 3. *Br. warranty* 94.

It is doubted if warranty diſcend to a Feme Covert, having right of Remainder upon a gift in tail from him who made the warranty with the Remainder to her, whether this ſhall be a barr in a Formedon in Remainder. 3 H.7.9

Tenant for life, the Remainder to me, and to his Daughter, being my wife in fee, the Tenant for life aliens with warranty and dyeth, this ſhall bar me and my wife in *Conſimili caſu*, 18 E.3.3.

XXXIX. *Whether warranty ſhall bar an Infant.*

BY *Littleton fol.* 163. *plac.* 35. Tenant in Dower alieneth &c the heir being within age, and alſo at the time when the warranty diſcended upon him he was within age, the heir may enter, for no laches ſhall be judged in the heir within age; but at the time of the diſcent if he were of full age, and entred not upon the Alienee in the life of the Tenant in dower, there peradventure the heir ſhall be barred by ſuch warranty, becauſe it ſhall be accounted his folly, that he being of full age, entred not in the life time of the Tenant in Dower, &c. hereto agreeth *Priſot*, 35 *H* 6.63. and by his opinion he ſhall not defeat it by Aſſiſe: For if it be pleaded againſt him and he cannot plead entry to defeat it, he ſhall be bound. And it is ſaid elſewhere, that upon diſcent and the like where the entry is not lawfull, and a collaterall warranty diſcends, it ſhall bind for ever, notwithſtanding Nonage or Coverture, for Nonage nor Coverture will not ſerve to defeat a collaterall warranty, but where his entry is lawfull: And by *Schard*, *Stouffe*, and *Birton*, in an Aſſiſe, if collaterall warranty deſcend upon an infant, he may enter in the life of his anceſtor, or after well enough, 28 *Aſſ. p.*28. *& per Cur.* 18 E.4.13. *Tamen videtur*, that if a diſcent be mean between the full age and the entry, that then he cannot enter, but by 32 E 3. *Brook warranty* 94. and *Fitzh. warranty* 30 where the entry is taken away, there the warranty is a barr, and ſo of coverture by *Stone*, 6 E. 3.6. *Fitzh Warranty* 60. If you be within age, it is greater reaſon that your action ſhould ſtay till you come to your age, which ſhal not out him of his anſwer by reaſon of his Nonage, and after the Plaintiff was non-ſuit, being in doubt that the ſuit ought to have ſtayed untill his age &c. and by 28 *Aſſ pa.*28. The alienation by the Tenant by the curteſie with aſſets and warranty ſhall not prejudice the Infant within age, but that he may well enter after the death of the Tenant by the curteſie, notwithſtanding the Warranty and the aſſets, *vide* 35 *H* 6. *and* 32 *of* E 3: in the title *Warranty*, Tenant by the curteſie aliens with warranty and dyeth,

eth, Aſſets diſcend to the heir within age who enters upon the feoffee, and adjudged lawfull, becauſe he might have entred for the forfeiture, and then the warranty ſhall be defeated, and no negligence ſhall be accounted in him within age, 32 E.3. *Fitzh. warranty* 30, 28 *Aſſ.* 28. *acc.* and the ſame caſe.

If an Infant be diſſeiſed, and the Anceſtor collaterall releaſe with warranty and dye, the infant may enter, but it behooves him to do it preſently after he comes to full age, becauſe the Infant had no diſcretion, *Priſot* 35 *H.*6. 63. but *Danby*, otherwiſe.

By all it was cleerly adjudged, 18 E. 4 13. If Donee in taile dye ſeiſed, and the mother releaſeth with warranty which deſcends to the iſſue within age, he may enter within age, or at full age.

XL. *Whether Warranty doth barr a Uſe in Taile, and the Feoffees.*

NOte, the Grandfather being Tenant in tail diſcontinues, and thereupon makes the will, that his Feoffees hold his Lands untill his debts be paid, and afterwards to reinfeoft his heirs of his body and dyeth, the Father enters and makes a feoffment, the debts not being paid, and levies a fine and ſuffers a Recovery by writ of right, and cauſeth collatererall warranty to be made, and dyeth, and now the ſon enters, and as ſome ſay, the feoffees may enter, and make him an eſtate, according to the will of the Grandfather, and the opinion of *Huſſey* and *Brian* cheif Juſtice and others was, that the ſon ſhall be barred by the collaterall warranty, and the warranty of his Father, and according to the Recovery, the which the ſon could not undo by the new Statutes, and *Fairfax* and *Townſend* were of opinion, that the heir was barred by the deed, but not the Feoffees, becauſe the Statute doth not bind them, and the feoffees have nothing but only to the uſe of the heir, by which the heir might enter after the debts be paid, and now the debts are payd, and were not at the time of the feoffment of the father, and the heir might claim by the will of the Grandfather, and not by the Father, by which &c. but the cheif Juſtices and others were of a contrary opinion, *M.*3 *H.*7.13.

XLI. *Whether warranty diſcended upon one in Poſſeſſion, ſhall hurt.*

TEnant for life grants over his eſtate, in whoſe poſſeſſion the Anceſtor collaterall, releaſeth, hee in Reverſion releaſeth with warranty, this is no barr to him, for hereby his eſtate is not enlarged, 41 E.3. *Fitzh.*

warranty,

warranty 15.44 *Ed* 3. 10. agree, where the caſe was thus, Leſſee for life, the remainder to another in tail, the remainder to the right heirs of the Tenant for life, who grants his eſtate as aforeſaid, but otherwiſe it is if he had the fee at the time of the Releaſe made unto him, 44 *Aſſiſe* 28. *Action* 43 *Ed.* 3.9. The opinion of *Finch* was otherwiſe, as it ſeemeth; for he ſaid, that if Leſſee for life, be with remainder in tail, and the Tenant in Tail releaſeth to the Tenant for life with warranty, this ſhall bar him with aſſets.

If there be Tenant for life, with remainder in Tail, and the collaterall anceſtor of him in remainder releaſe with warranty and dieth, this ſhall not bar me, if the Tenant for life die, for the warranty is gone away, and determined by the poſſeſſion, *Kirk* 45 *Ed.* 3. 21. *Perry acc.* 44 *Aſſiſe* 45 *Ed.*8 21.H 7.

See 45 *Aſſiſe* 6. adjudged. If there be a gift in Tail, the remainder to the King, and he makes an exchange with another, to him, and his heirs for other Lands, and with a clauſe of warranty and dieth without iſſue, and aſſets deſcend to the King, that this ſhall be a bar by the warranty, and reſtitution was there made.

XLII. *In what actions warranty ſhall bar.*

IN an action of Treſpaſſe, upon the Statute of 5 *Ri.*2. the Defendant ſaid, that certain perſons were ſeiſed of the ſame Lands to the uſe of the father of the Plaintiff in fee, and the father and his heirs made a Leaſe to him for years, with warranty, and the Plaintiff in the life time of his father confirmed his eſtate with warranty; Judgement, whether againſt this deed with warranty, he can maintain this action. This is no bar in this action, for no Land is to be recovered, nor in demand, but damages, as in the generall Writ of Treſpaſſe, and the nature of Warranty is to ſtop one by way of concluſion of his Right, and it is not pleadable, but where the Land is in demand, 20 *H.*7.2.21 *H.*7.32.

In Treſpaſſe upon a *Clauſum fregit*, the Defendant may plead a Fine with proclamations in bar, but then it behoves him to conclude Judgement, if action, for he cannot in Treſpaſſe rely upon the eſtoppell, for this goeth to the realty, otherwiſe it is in an Aſſiſe: So the Defendant may plead a warranty in treſpaſſe, and conclude Judgement, if action, but he cannot rely upon the action, 27 *H.*8.22. *Perkins pa.*726. otherwiſe, 32 *Ed.*4.5.*a*: and 21 *Ed.* 4. 82. agreeth with the warranty with concluſion.

In a forcible entry the Defendant pleaded a Feoffment of the anceſtor of the Plaintiff with warranty, and demands Judgment, if againſt the deed of his anceſtor &c: The better opinion in the book was, that this is no plea, becauſe nothing is demanded but dammages; afterwards it is ſaid, that

that it appeared by the Declaration, that the warranty was made a long time before the Treſpaſſe ſuppoſed to be done. *Bryan*, then peradventure it may be good, for this warranty proves the poſſeſſion lawfull at the time of the entry, 11 H.7.15.

In Treſpaſſe upon the Statute of 5 *R*:2. the warranty of the anceſtor was pleaded, Judgment demanded, whether againſt the deed of the anceſtor, which comprehends &c. the better opin on ſeemed, that it was no plea, till the Freehold came in debate, 1 H.7.12.22.

In Treſpaſſe upon the Statute of 5 *R*.2. brought by the husband and wife, the Defendant ſaid, that the anceſtor of the wife, whoſe heir ſhe was, did enfeoff ſuch an one with warranty, whoſe eſtate ſhe hath, demands Judgement whether againſt this deed, which comprehends warranty, whoſe heir the wife is &c. the opinion of the Court was, that this is no good plea in this perſonall action, otherwiſe it in a Plea of a reall action, 15 *Ed*.4 *Fitzh. entry* 42.

Tenant in Tail of an Advowſon in groſſe, gives the ſame in fee to one in whoſe poſſeſſion an anceſtor collaterall doth releaſe with warranty, and dieth, Tenant in Tail dieth, the Church happens to be void, and the Grantee preſents, and the iſſue in Tail brings a *Quare impedit*, the Defendant pleads the collaterall warranty of the anceſtor, and this was a good bar, becauſe by his count he claimed the inheritance, but if he had claimed the Advowſen but for years, or for the next avoidance, then it had been no good bar: So in Treſpaſſe *prima facie*, the warranty is no bar, becauſe the plaintiff is ſuppoſed to be in poſſeſſion, but if he intitle him to the Freehold or to the inheritance, then it is a good bar: ſo in waſt if he declare upon a Leaſe for life, ſo in aſſiſe if he claim by *Elegit*, or ſtatute Merchant, it is no bar, otherwiſe it is, if he claim the inheritance or Freehold, and all this was granted by the Court, 15 *Hen*.7.9.

Treſpaſſe for breaking of his Cloſe, the Defendant pleaded the releaſe of the anceſtor of the plaintiff in his poſſeſſion with warranty, Judgment, whether againſt this warranty of the anceſtor without other matter ſhewed, *acc.* &c. The opinion of all the Court, except *Catesby*, that the plea was not good, becauſe the action was meere Perſonall, 12 *Ed*.4.4.

In Treſpaſſe, the Defendant intitles himſelf to Lands by act of Parliament, becauſe they were ſeiſed into the Kings hands, and by his Letters patents &c. he grants the ſame Lands to the Predeceſſor of the defendant, and demands Judgment, if without ſpeciall matter ſhewed againſt this act of Parliament, he ſhall be received to this action, and it was not allowed by ſuch concluſion, for it cannot be pleaded by way of eſtoppell in this action, becauſe if the defendant would plead in Treſpaſſe the deed of the anceſtor of the plaintiff with warranty, whoſe heir he is of this Land, and demands Judgment, if againſt the deed, which comprehends warranty &c. This is not of force, becauſe theſe actions are all ſaid to be in poſſeſſion *prima facie*, and not in the right, ſo if he plead a recovery againſt the anceſtor of the plaintiff, whoſe heir he is of the ſame Land-

and,

and demands Judgment, if againſt this recovery *&c.* This is of no force, becauſe no Land ſhall be recovered thereby, but in an aſſiſe or *Præcipe quod reddat*, they are good pleas pleaded by the manner &c but the Juſtices hold theſe pleas good to plead by the manner againſt the Plaintiff himſelf, as warranty made by the plaintiff himſelf, or recovery againſt the Plaintiff himſelf, but not where they are againſt the anceſtor (where note the diverſity) and ſo the Plea was not holden good, but the Juſtices held, that if they would plead matters before, without ſuch concluſion, and colour given, that this ſhall be good without doubt, but without colour it would not be good, but in the Caſes before, it is is a good plea without colour, by cauſe of eſtoppell, becauſe where he pleadeth an eſtoppell, there is no need to give colour, and without pleading an eſtoppell it behoves him to give colour, 35 *H* 6 *Fitz. h. Treſpaſſe* 160.

In Treſpaſſe for breaking his Cloſe, the Defendant pleads the warranty of the anceſtor of the Plaintiff, whoſe heir he is by a deed ſhewed before that made to ſuch Tenant of the place where the Treſpaſſe was done, whoſe eſtate he hath, and relyeth upon the warranty, afterwards he waived this plea without compulſion, and pleaded the Feoffment of the anceſtor with warranty made to ſuch an one whoſe eſtate the Defendant hath, and demands Judgment, if againſt the deed of his anceſtor, which comprehends warranty, without ſpeciall matter ſhewed, this action he ought to have, and this was held a good plea, 21 *E.* 4. 18. 82.

In an Aſſiſe of Common, the releaſe of the anceſtor of the Plaintiff is no plea with warranty, becauſe that it is of another thing, and alſo becauſe that the heir cannot defeat the warranty by entry into the Land, becauſe his entry into the Land is not lawfull, ſo to bar him by the deed his anceſtor, where no Laches ſhall be adjudged in him, it ſhould be hard, 22 *Aſſ.* 8. 34 *Ed.* 3.

In an Aſſiſe of common of paſture, the releaſe of the anceſtor of the plaintiff with warranty, is no bar, becauſe the warranty doth not extend to common, if he were ſued by a ſtranger of the Common, he ſhall not vouch by reaſon of this warranty, nor by conſequence ſhall bar him, but the releaſe of the plaintiff, without warranty is good, but if it be with warranty, and he rely upon the warranty, it is not a bar, 33 *Ed.* 3 *Fitz. Warranty* 74.

In a *Juris utrum*, or Entry *ſine aſſenſu Capituli*, by a Dean, Warranty of the anceſtor is no bar, 27 *H* 6. *Fitz. warranty* 48.

If a Parſon of a Church be diſſeiſed of Land in right of his Church, the Releaſe of his brother with warranty ſhall be a bar to him for his life &c. In an aſſiſe &c. 34 *Ed.* 3. *Fitz. warranty* 71.

In a writ of Dower, the warranty of the anceſtor of the Demandant is no bar, *Quære cauſam*, 43 *Ed.* 3. *Fitzh war* 72.

Releaſe of the anceſtor of the plaintiff is no bar in Dower, nor in a *Quod permittat*, by *Sulyard* 21 *Ed.* 4. 82.

Coll. and *Vavaſour* agree, but *Bryan* ſaid, if he claim the Common by the ſame anceſtor, it is a good bar, *ibidem*.

If

If a man have a Rent-charge, or a Rent-ſeck iſſuing out of the Land, which is holden of his father, by certain Rent, yet if the father releaſe to the Tenant with warranty, this is no bar to the heir, of his Rent-charge, or Rent-ſeck, as I underſtand the book, 41 *Aſſ.* 6.

In an aſſiſe againſt a man and his Wife, and another, the third ſaid, that he was enfeoffed by the husband and his wife, and voucheth them who were in Court, and would have warranted and pleaded in bar, and were not received, becauſe in an Aſſiſe of Novell diſſeiſin, a man ſhall not warrant, unleſſe he will willingly warrant it, and it ſhould be altogether againſt the will of the husband, otherwiſe it is in other pleas where he ſhall be compelled to warranty by proceſſe &c. 20 *Ed.* 2. *Fitzh. Warranty* 84.

Things to be warranted.

XLIV. *Where warranty ſhall follow the eſtate, and enlarge it, or continue after the eſtate determined.*

A Man doth enfeoff one *R.* to him, and to his heirs, and aſſignes, and by the ſame Deed doth bind him to warranty by ſuch words, *Et ego vero prædict. &c. omnia, terras & tenementa contra omnes Gentes in forma prad. warrantizabimus &c. Hanck.* This warranty extends to the aſſignes of the Feoffee as well as to the Donor, and the laſt term a fine was pleaded here in the ſame manner with warranty, *ſcil. in forma prædicta*, and this was the ancient form, and I know this caſe was put, and adjudged in my book, that the warranty was good by the manner, which was affirmed by all the Judges, 14 *H.* 4. 13. whereto agreeth *Perkins* 49. *c.* 12 *Ed.* 2. and 6 *Ed.* 2. *Br. warranty* 82 *&* 66.

In an aſſiſe it is admitted, where a man releaſeth to Tenant for life, the remainder over in tail, the remainder to the right heirs of the Tenant for life, and the releaſe is with warranty to him and his heirs, and the Tenant for life grants his eſtate over and dieth, and he in remainder in Tail enters, that this warranty is determined, and void, for the releaſe ſhall enure to all the eſtates, and the warranty cannot enure but to him to whom it was made, and cannot enlarge his eſtate, 44 *Ed.* 3. 10.

In a formedon in remainder, *Sad.* there where he demands 20 acres, and two Mills, we ſay, that *F.* his Uncle enfeoffed us by this deed which is here, and bound him and his heirs to warranty, and we ſay, that at the time of this feoffment, the place where the Mill was afterwards ſet, was then Land, and paſſed as parcell, and the deed was read, which was, 20 acres of Land, and one Mill, *Et ego volo &c. warrant. &c. omnes prad. terras, cum pratis, paſturis, homagiis, & ſervitiis liberum tenementum, cum om-*

nibus ſuis pertinentiis, Parn. as to the Mill, he had not warranty, which did extend it ſelf &c. by reaſon whereof we pray ſeiſin thereof, for in that he granted ſo much, and one Mill, he ſuppoſeth that the Mill is in groſſe by it ſelf, and then it cannot be compriſed within theſe words, *omnes terras. Herle*, the deed willeth *omnes terras cum pratis, paſturis, & cum pertinentiis &c. warr. & Parn.* A Mill cannot be appurtenant to Land, nor parcell, nor more, for it doth ſuppoſe a thing in groſſe. *Herle*, it ſeems to us, that it takes to the whole Deed notwithſtanding this grant &c. 7 *Ed.* 3. 50. *Fitz. Warranty* 45.

An Annuity was granted to one and his heirs, and warranted for him and his heirs, to the Grantee and his heirs, and the opinion of the Court was, that the annuity is taken away by the death of the Grantor, becauſe, that it was not granted for him and his heirs, and the warranty is of force when the eſtate is determined, 2 *H.* 4. 13.

Where Lands were given to two and their heirs, leaving out *ſuis*, with warranty to them and their heirs, that they have but eſtate for life, and the warranty doth not amend the eſtate, for it doth not alter, but enſue it, and is determined with it, and is as it were a Covenant, for if a Leaſe be made for life with warranty in fee, this ſhall not enure but for life, by *Forteſcue* 19 *H.* 6 74. 20 H. 6. 35. and 22 *Hen.* 6. 15. adjudged. So if a Feoffment be made in fee with warranty in tail, this alters not the eſtate, but he hath the Fee, 10. and 11. *Eliz. Catlyn* agrees of a Leaſe for life.

Leaſe, *pur auter vie*, with warranty in fee, it enlargeth not the eſtate *in ſelta ad molendinum*, 17 *Ed.* 3. 67.

If gift in tail be made with warranty in fee, *viz.* to him, his heirs, and aſſignes, and he makes a feoffment, and dies without iſſue, the donor ſhall be barred by this warranty, 7 *Ed* 3. 34. and 46 *Ed.* 3. 4. agrees, for the warranty extends to the aſſignes.

Quere, Where Lands were given to husband and wife, and warranty to them in Tail, if it were tail, or not, 12 *Aſſ.* 16. but 12 *Ed.* 3. *Fitzh. Tail* 3. that it is Tail, *Perkins* 38. contrary, but for life &c. for by warranty in the deed, the eſtate ſhall not be altered.

If Leſſor for life releaſe to the Leſſee all his Right with warranty, to him, his heirs and aſſignes, yet his eſtate is not altered, for the heir can not have warranty, if he hath not eſtate, 7 *Ed.* 3. 6. & 7. in the ſame opinion.

XLV. Whether warranty extend to another eſtate.

SCire facias out of a Fine againſt a Tenant, the husband and the wife were received for default of the Tenant, and ſhew unto the Court, that the husband and wife did leaſe to the Tenant the Tenements for term of life,

life, saving the Reversion to them and the heirs of the wife, and shewed a deeed of the ancestors of the Demandant with warranty, to the same wife, to her, and her heirs of her body, saving the reversion &c. and demands if against &c. *Belknap*, by the deed shewed, the wife had but a fee tail, and she had reserved a Reversion in fee, of which she is now received, whereby Judgment, if to this warranty which extends to another estate, the Law will put us to answer.

Finch. If she were to dereign the warranty, she shall not be warranted of another estate, but she may counterplead the warranty, but in this case of rebutter, not; *M.* 45 *Ed.* 3. 18.

Note, that *Hill* said, if Tenant in Dower alien in fee with warranty, and a Writ be brought in the life of the Tenant in Dower, and before the time of the Plea, the woman dies, by her death, and by her warranty the heir shall be rebutted. *Scrope* Iustice, the Law is otherwise, for if he could say, that if he took his fresh suit upon the alienation, living the Tenant in Dower, he shall not be rebutted by the warranty of the Tenant in Dower, after her death, 3 *Ed.* 3. *It. Nor. Fitz. warranty* 62.

In a Formedon in discender by *W.* against *C.* of a gift made by *B.* and *C.* his wife, *Belk.* one *R.* great Grandfather of *W.* now demandant, gave the Lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C.* died, and *B.* the husband survived, whose estate the Tenant hath, Judgment, it against the deed of his ancestor &c. *Cheld.* this *R.* is the same person, which we have supposed, who gave in fee tail to the said *B.* and *C.* and so his plea is contrary to our Writ, for which we will aver our writ. *Belk.* I rely wholly upon the warranty. *Cheld.* shew then how you have his estate. *Thorp.* The most stranger in the world shall be well received to bar you by the warranty, without shewing how he hath his estate, but in case of voucher he shall not be received, and therefore answer. *Cheld*, It is not the Deed of *R.* our Ancestor, issue taken; and others were of a contrary opinion, *T.* 43. *E.* 3. 19.

XLVI. *Whether Warranty shall bind the right which comes of a younger time.*

WArranty goes to no more but to that which is of the part of the party, for if husband and wife levy a Fine with warranty of land of the husband, yet she shall have her Dower, 25 *Ed.* 3. *Fitzh. Dower*, 132. and 13 *Edw.* 2. *Fitzherbert Dower* 160. 19 *Ed.* 2. *Fitzherbert. Dower* 165. agreeth.

Assignment of Dower with warranty without impeachent of wast is no bar in a Writ of wast, 16 *H.* 7 4.

Release to Tenant for life with warranty is no barr of Condition broken

ken after, ſo of waſt or forfeiture committed afterwards, ſo of the heir to the diſſeiſor of his father, in the life of his father, without warranty, 42 *Ed.*3 6.*cap.* as it ſeems of waſt, *tamen quare.*

If the husband diſcontinue, and the iſſue confirm with warranty during the life of his mother, who after dieth, he ſhall be barred by this warin *ſur cui in vita*, but if there were not warranty in the deed, *non valeret* 10 *Ed.*2 *Fitz. Warranty* 82. and *Fitzh. Confirmation* 24. agree, if he confirm the eſtate of the diſſeiſor of his father, he ſhall not be barred without warranty.

By releaſe of the father to the diſſeiſor of his Grandfather with waranty ranty, which deſcends to the Son, ſhall bar him of entry, and action for the Land in Fee, notwithſtanding the right deſcended unto him after the warranty, if the father died firſt, and the Grandfather after: So by releaſe of the elder ſon in the life of his father, *Littleton fol.* 159. *plac.* 11. & 12.

XLVII. *Whether warranty can be divided*

IN a *Pracipe quod reddat*, Tenant in ſpeciall Tail hath iſſue a daughter by his wife, and diſcontinues with warranty, the wife dies, he takes another wife, and hath iſſue another daughter, and dies. The elder daughter takes a husband, and ſhe and her husband bring a Formedon, and the Tenant voucheth the daughter wife of the Demandant, and the other ſiſter by a ſtrange name, the wife demandant appears, the other makes default to the *ſequatur*, whereby the Tenant rebutted againſt the Demandant by the warranty, and aſſets deſcends for one moyety, and for the other moiety the Demandant had ſeiſin of the Land (which note) for he cannot rebut for the whole, becauſe the warranty deſcends onely upon the wife of the demandant, and ſo ſee a warranty ſevered, 45 *Ed.* 3.23.

Note, where there be two parceners, and the one alieneth her part, and the other is ſued, there becauſe ſhe cannot have aid of her coparcener, ſhe may vouch alone, and ſhall have the warranty alone, by *Finch* and *Knivet*, *& non negatur* in formedon, and ſo obſerve the warranty ſevered, and ſhe ſhall have it onely for her moiety, 38 *Ed.*3. 20. *Brook, warranty* 27.

In a formedon, the Tenant pleads joint-tenancy with *J. N.* the Demandant ſaid, that *J. N.* is his villain, and the opinion of the Court was, the joint-tenancy ſhall ſtand, for otherwiſe the Tenant ſhall loſe his warranty, for both ſhall joyn in voucher, ſo long as the joint-tenancy continueth, but if it be ſevered by lawfull entry, as where the Lord entreth into the moiety of his villain, there the other in *Pracipe quod reddat* againſt him, he may vouch alone, for the jointure is ſevered, the ſame Law is where his moiety is recovered againſt him. *Quod Nota*, and ſo you ſee the

the warranty divided in ſome caſe, 48 *Ed.* 3. 16. and 48 *Ed.* 3. 12. Warranty of an infant is void, and yet if an infant and a man of full age make warranty, both ſhall be vouched, and upon the age found it ſeems that the other ſhall warrant the whole.

Note, where a man and his wife do render Tenements by fine to one *B.* the husband and his heirs ſhall warrant onely, and not the wife nor her heirs, 10 *Ed.* 3. 27. *Fitzh. Warranty* 54.

Note, that where two make a Feoffment by deed, by the words *Dedi et conceſſi*, and the one dieth, the other ſhall warrant the whole, and if an infant and a man of full age make a feoffment with warranty, he of full age ſhall warrant the whole, which ſee more fully, *Bro. recovery in value*, 39. 39 *Ed.* 3. 26. and *Bro war.* 98.

If a man enfeoff *A.* and *B.* with warranty, who enfeoff *W. N.* who is ſued, and voucheth the two, who vouch the firſt Feoffor, and after one of the two makes default, and the other appears, he ſhall have the warranty againſt the firſt Feoffor, and ſo is the better opinion, 11 *Ed.* 4. 8. and by *Luddington*, if two joint-tenants, be ſued, the one appears, and the other will render or make default, he which appears ſhall have the whole warranty. but by *Aſcue*, if there be two joint-tenants, and the one enfeoff a ſtranger of his part, the warranty is taken away, which *Luddington* denied not, *Concord* 11. *Ed.* 4. 8. 5 *Hen.* 5. 7.

So it is where two warrant, and the one had nothing, and maketh default when he is vouched, the other ſhall warrant the whole, ſee 39 *Ed.* 3. 26. 41 *Ed.* 3. 30.

Father and ſon purchaſe jointly, the father aliens the whole with warranty and dies, this is no bar to the Son, but for the moiety, by *Lit. fol.* 157. *pla.* 5. agreeth 22 H. 6. 51. becauſe it did commence by diſſeiſin, as to the moiety, otherwiſe by *Herle*, 13 *Ed.* 3. *Fitzh. warranty* 25.

In an Aſſiſe of Novel diſſeiſin, where the deed of the anceſtor was pleaded in Bar, and it was alledged that he had nothing, but jointly with the Plaintiff, for term of their lives &c. this was in an aſſiſe before *Hill*, and by Judgment it was a bar as to the one moiety, and he recovered the other, 19 *Ed.* 3. *Fitzh. warranty* 38.

If white acre and black acre be given to *J. S.* and *J. K.* and their heirs, to have and to hold white acre to them and to their heirs, this *habendum* is void, but if this acre be warranted to them, this warranty is good, notwithſtanding, that it extends to the whole Land which was given, *Perkins fol.* 36. *G. 7. pla.* 176.

The Father and the Son joint-tenants in fee, the Father makes a Feoffment of the Land with warranty, and by the Livery outs the Son, and dieth, in an aſſiſe brought by the Son of the Land, the warranty was pleaded in bar of the Land, and adjudged upon the ſhewing of the joint purchaſe, that he ſhall recover the moiety, and for the other it ſhall be a bar, 13 *Ed.* 3. *Fitzh. warranty* 24. *Littleton fol.* 157. *pla.* 5. agreeth, an 13 *Aſſiſe* 6. *accord.* vvhere there vvere four Joint-tenants, and the one being

ing Father to one of the others, made a Feoffment with Warranty of the Land and died, and the two others dyed, the Son who was the fourth, recovered three Parts; and 19. *E. warrantie* 38. agrees with the former case.

The Father and the Son seised to them, and the Heirs of the Son, the Father makes a Feoffment of the Land to the Tenant in the Assize, with Warranty in Fee, and dyeth, and it was adjudged that the Son should recover the Land by *W. Herle* as its said, *quere veritatem* 13. *Ed.* 3. *Br. Warranty* 25. 13. *Assize* 7. adjudged accordingly, where two Joyn-Tenants and to the Heirs of one: But the *Reporter* saith, *Quere*, if the Tenant for terme of life were Ancestor to the other, I doe beleive, that then, he shall be barred of the moyety.

If Land be given to the Father and the Son, and to the Heirs of the body of the Father, and the Father alien the whole with Warranty and dieth, as to the moyety the Son may enter, for it commenced by disseisin, and as to the other moyety he shall have his action; yet it is to be considered, whether he can enter into any parcell, for then the Warranty as to that part is defeated, and one and the same Warranty by one and the same Deed, cannot stand in part, and in part be defeated, by *Newton and Paston*, but see *Fitzh. warranty* 4. their opinions to the contrary abridged of the doubt of *Ashton* 22. *Hen.* 6. 51. by all.

If there be two Joynt-Tenants, and the one makes a Feoffment of his parte, the other shall have the Warranty of the moyety because there was no default in him 29. *Ed.* 3. *Fitzh. warranty* 70.

Two Joynt-Tenants or Parceners make partition, they shall have aid one of the other to have the Warranty Paramount, the *Reporter* saith, *quere* of the Joyn-Tenants, if they shall have the aid 2. *H.* 6. 7. *Karf.*

If a Villain and a stranger purchase Joyntly, and the Lord of the Villain entereth into the moyety, the other shall have the Warranty of the moyety. So, if the Estate of the Villaine be defeated by Entry, or Recovery 48. *Ed.* 3. 17.

If there be two Coparceners, and the one alieneth his part, the other shall have the Warranty for the moyety 38. *Ed.* 3. 20.

If two be vouched and one makes default; Judgment is given for this moyety, the other enters in the Warranty for the other moyety. But if the *Voucher* releaseth the Warranty to the one, the Warranty shall not be divided but extinct in the whole. By *Finchden. Skipwith* contrarie, *quere hoc* 48 *Ed.* 3. 5: *Finch.* Agreeth of the default 45. *Ed.* 3. 23.

If I vouch two, and shew their Deed to bind them, and the one acknowledgeth it, and the other denies it, upon which I come to issue, and it is found against me, I shall recover against the other, but the moyety; but if I had demurred upon him upon his acknowledgment, and not answered the other, I should have recovered the whole Warranty against him, by *Stone*. So where I vouch two, and the one saith, he is within age, and I say he is of full age, and it be found against me, I shall recover against

against the other &c. but the Moyety, notwithstanding his acknowledgment of the Deed, and I shall be barred against the infant for ever, 18 *E.*3 23. *warranty* 75.

Two parceners make partition, the one being sued prayes in ayd of the other, who is returned summoned and severed, now the other shall have the warranty paramount, 43 *E.*3. 23. *Finch.*

Four parceners were vouched, three made default after defau't, whereby seisin was awarded for three parts, and as to the fourth, the other answered, 19 *E.*2. *Fitzh. Ayd* 172.

If two have warranty of me, and the one releaseth to me, this shall not bar the other, otherwise of an Obligation; 19 *Edw.* 3. *Release in Stath.*

If the eldest son enter into the whole, and makes a feoffment with warranty, and dyes without issue, the younger son is barred for one Moyety, that is to say, for his own moyety, and he may have his Formedon of the other moyety, *Lit. fol.* 160. *pla* 16.

XLVIII. *Whether a thing which come in lieu of another thing, shall be of the same condition.*

IF I recover land in value, and after I am sued for the same land, I shall not vouch by reason of the first warranty, because it was once executed, because it came in lieu, but where I am enfeoffed of a Rent with warranty, and after the Land comes in lieu of the Rent, I shall not have the Warranty of the Land, because a Covenant is taken strictly, by *Wilby.*

Some say, That if land come in lieu of Rent by Escheat, that hee shall the warranty of the land, 45 *E.*3. *Fitzh. voucher* 72.

In a Formedon against an Infant, where his Ancestor was seised of a Manner, of which this land in demand was holden, and dyed, and afterward the Tenant was attaint of felony, and he entred and prayed his age, and had it, because the land came to him in lieu of the Seigniory, which Seigniory to him descends to vouch, now by the Warranty made of the Seigniory, 6 *H.*4 1. 16 *E.*3. *age* 46.

If Rent be held by some service, and the land be come in lieu of the Rent, in the same plight as the Rent was, the land shall be, 1 *Hen.* 4. 4. *Hanck.*

If a Seigniory in gros be granted to an use, and the land escheat, the feoffee shall be seised to the first use, so if the feoffee recover land in value, upon a voucher, 14 H. 8. 7. 9. *Fitzh.* and *Pole.*

If a Manner and the services of the Tenant were granted by fine, if the land comes into the hands of the Tenant by escheat, the Conusee shall have a *Scire facias*, of the land, because it came in lieu, &c.

So

So in a Formedon by Tenant in taile, of land eſcheated, the warranty is taken away, 18 *E.* 3.

So if a Seigniory be allotted to one Coparcener, and after the land eſcheat, whereof ſhe is ſued, ſhe ſhall have ayd, *pro rata*, of her companion 16 *E.*3. *Fitzh. age* 46: and 10 *E.*3.58.

An Abbot recovers in value by reaſon of the warranty of the Anceſtor, this is no Mortmain, for it is no new purchaſe, 45 *E.*3.58:

Leſſee for life rendring rent recovers in value againſt his Leſſor, hee ſhall not pay any Rent, for this ſhall be recouped upon the extent, 22 *aſſiſe* 52.

So if he hath a Leaſe for life without impeachment of waſt, and recovereth in value, he ſhall now hold this as ſubject to waſt, ſo if land diſcend to one who recovers in value other land, to which another man hath title to enter, yet his entry ſhall be lawfull, 34 *Aſſ.*

So of land recovered in value, if he be ſued, he ſhall not have voucher againe, unleſſe it be a warranty in Law, as upon exchange, 34 *Aſſiſe* 15.

Right of Diſclaimer, where it eſcheateth after the Seigniory doth diſcend, the plea ſhall not ſtay for the land, for that did never diſcend, but otherwiſe if he had demanded the ſervices, *Vide* 4 *M. fol.* 137. *f. In Ceſſavit.*

XLIX. *Whether warranty being reall may be good of a thing in the perſonalty.*

TEnant in taile of an Advowſon in groſs, grants it to *W:N.* in fee, and the Anceſtor collaterall to the Tenant in taile doth releaſe with warranty, and dyeth without iſſue. The Tenant in taile dies; the Church voides, *W. N.* preſents, and the Iſſue in taile brings a *quare impedit*, and the other pleads the releaſe with Warranty, and it was adjudged a good Bar, becauſe that he claimes the inheritance, otherwiſe if he had claimed but for Terme of years. But it is a good Bar in Waſte, where the Plaintiff declares for terme of life, but it is no bar againſt him that claimes by *Elegit* or by Statute Merchant, but if he claime the freehold it is a good Bar, *quod nota*, 15.H.7.9. and by *Hank.* Warranty is no Plea in Treſpaſſe, for it is a Covenant reall, and Treſpaſſe is in the Perſonaltie 14. H. 4. *fo.* 36.

A man doth make a Leaſe for years and Covenanteth to warrant the Land *&c.* The Leſſee is outed by wrong, he ſhall not have Covenant, otherwiſe it were, if it were upon an elder title: And no man ſhall have advantage of Warranty reall, if he be not Ter-Tenant, as by Voucher or *Warrantia Charta*, otherwiſe it is, of a perſonall Warranty (as above) for if he be outed, *&c.* he may have the benefit of the Covenant, *&c.* 26. H. 8.3.

H. 8. 3. and 22 H. 6: 52: agreeth, For if Leſſee for years be outed by him that hath no right, he may have his Action of Treſpaſſe, or *Ejectione firmæ*: Otherwiſe it ſeemeth of a Warranty of Freehold, and he is ſued by him that hath no right, yet hee may vouch by this Warranty.

In a *quare Impedit* it was ſayd by the Juſtices, That in Treſpaſſe done in Land, Collaterall Warranty is no plea, becauſe the Plaintiff is ſuppoſed to be in poſſeſſion, but if hee intitle himſelfe afterwards to the Freehold, then it is a good barr: *quære inde*, for it appears often times that it is a good Eſtoppell in Treſpaſſe, after that the Freehold comes in Debate; but no barr, for the Warranty is Reall, and the Action is perſonall. 15 Hen: 7: 9: 21 Hen: 7: 32: That Warranty upon a Leaſe for yeares is no plea in Treſpaſſe, by two Juſtices, the third being of a contrary Opinion, *Ideo quære*, and that he may have this action of covenant thereupon.

In Treſpaſſe upon the Statute of 5 *Rich*: 2: The Defendant pleads a Leaſe for yeares of the Anceſtor of the Plaintiff, and Confirmation made by the Plaintiff to the Leſſee with Warranty, and Judgement demanded, if againſt this Deed which doth comprehend the Warranty, &c:

Brooke, The Warranty is no plea, for it is but of a Chattell reall, upon which no Action lyeth, in which a man may vouch or rebut

Newport and *Eliot*, A Grant of a VVard is good with Warranty, and in a VVrit of VVard, the Grantee may vouch or rebut. And *Fairefax* agreeth with *Brooke*, And that it is not but as the VVarranty of a horſe.

Juſtice *Read*, In an Aſſiſe by Tenant by Statute Merchant, Collaterall VVarranty by the Anceſtor of the Plaintiff, is no barr, for it is but a Chattell reall, although the VVrit be, *Vt de libero Tenemento*, 20 H: 7: 4:

If a man make a Leaſe without VVarranty, and a ſtranger entre h by a title, the Leſſee ſhall not have action of Covenant againſt the Leſſor himſelfe, for he hath not broken the Covenant, and alſo there is no VVarranty. yet by *Needham*, hee ſhall have Action of Covenant, becauſe the Leſſee hath no remedy, *quære* 32 H. 6. 32.

If a woman purchaſe a Ward, and take a Husband and dyeth, the Husband is ſued of the Ward, he ſhall have the VVarranty of the Feoffor of the wife, becauſe it is a Chattell lawfully veſted in him, and although he be a ſtranger thereunto, and the ſame Law is, where it is ſued in the life time of the wife, 29 *E.* 3. 48. *Fitzh. War.* 74.

L. *How a Chattell ſhall be warranted.*

NOte, by *Huſſey* and the whole Court, if I bargain with *J. B.* for a thing for 20 s. and warrant it, and I deliver to him the thing ſold, if he be deceived he may have an action of deceipt, notwithſtanding he hath not paid me the money, becauſe I may have an action of Debt at my pleaſure, 9 H.7.21. *Concord* 5 H.7.18. for here the warranty goes with the buying, but contrary, if I ſell at one time, and afterwards I warrant it at another time, the warranty is void, as of a horſe, grain, *& ſimilibus, ut dicitur*, and with this difference agrees 5 H.7. 43. and *Dyer fol.76 pl.* 28. in the caſe between *Andrew* and *Bowhey* in the Kings Bench.

Deceit in ſelling falſe ſtuffe, knowing the ſame to be falſe, and the warranty to be good, and by the Court there is no need of warranty, when the vendor knoweth it to be falſe, or corrupt, and otherwiſe it is, where I know not this, and upon the knowledge, an action of the caſe lieth, without any warranty, *Quod nota*, 9 H.6.53.

Deceit upon warranty of cloaths, upon ſale of them to be in length thirty yards, where they were but of twenty two yards, the Defendant ſaith, that the property was in *I.N.* and he, as his ſervant, and by his commandement ſold them, without that he ſold them *modo & forma*, and by *Littleton*, although it were the ſale of the maſter, by which the maſter might have an action of Debt, yet this is the warranty of the ſervant, whois the Defendant, and an action lieth againſt him, for it may be that the plaintiff would not have bought them, but upon truſt of the warranty of the defendant, yet by *Choke* and *Bryan*, deceit lieth not; where it is ſold of one by the warranty of another. *Quare*, for it ſeems that an action upon the caſe, upon an *Aſſumpſit* for ſuch aſumme will lie. *Bryan*, if a man ſell to me ſeeds, and warrant me that it is good, where it is, naught, or that they are ſeeds of ſuch a Countrey, which is falſe, deceit lieth, for I could not know them, but by him, if he warrant that the ſeeds ſhall grow, this is a void warranty, for that is in God.

And if a man ſell me a horſe with one eye, and doth warrant me that he hath two, this warranty is void, for that the vendee might ſee whether it were ſo or not. *Choke*, warranty that a horſe ſhall carry a man 30 miles a day is void, for he cannot warrant a thing to come. *Fairfax*, a man ſells cloath *Murrey* colour, and doth warrant, that it is blue, this warranty is void, becauſe it appears to the view. *Bryan*, if the vendee be *captus oculis*, deceit lieth there. *Fairfax* granted the firſt Caſe, that if it faileth in length, deceit lieth, for this doth not appear by the view, but by meaſuring, 11 *Ed.* 4.6

In an *Aſſumpſit*, *Bowhey* the defendant ſuch a day, year and place did aſſume upon himſelf for 20 Marks, whereof the moietie was paid in hand, and the reſidue at certain times between them agreed to be paid, that he would

would deliver at ſuch a place within four days after ſuch a feaſt four hundred pounds of good and merchantable waxe, the Defendant to defraud *Andrew* the plaintiff, ſuch a day which was before the Feaſt, delivered to the Plaintiff at the ſayd place 373 pounds of Wax mixt with Roſin and Turpentine; affirming and warranting the ſayd 373 pounds to be good; able and merchantizable, where it was not ſo, and becauſe the Warranty was not upon the contract immediatly, but a moneth after, this was not good, and the deceit there was not reſponſible nor materiall, *Dyer fol. 76. plac.* 28.

LI. *If Warranty being altered, the eſtate ſhall continue.*

Littleton fol. 159. *pla* 14. Warranty upon releaſe of the middle Son, diſcended to the eldeſt is collaterall, and barrs him, to avoid the diſcontinuance of the Father, but if the eldeſt ſon dyeth without iſſue, the youngeſt ſhall have a Formedon, for it is lineall to him, *P.6. Eliz.* It is granted, if the eldeſt ſon were once barred in a Formedon, by collaterall warranty; 19 H.6.62. *Aſcue* agreed, and the opinion there is, that if collaterall warranty diſcend to the elder heir male by ſuch tail, who had iſſue a woman child, and dyeth, the younger ſhall be barred thereby, ſo ſhall his iſſue, being in by diſcent.

LII. *Who ſhall take Advantage of warranty.*

NO man ſhall take advantage of a Warranty reall, if he be not Tertenant as by voucher or *Warrantia Chartæ*, otherwiſe it is of Warranty perſonal, for if he be outed &c. he may have an action of Covenant 26 H 8.3. and 22 *H.6.* 52.

If three be enfeoffed joyntly with warranty, and two do releaſe or ſurrender to the third, he may dereign the firſt warranty by voucher, or Writ of *Warrantia Chartæ*, becauſe he is in by the firſt feoffor, and not by him who releaſeth or ſurrendreth. *Quære* if the ſurrender be good, but it ſeems if one releaſe to one, there the one is in by the other, and hee ſhall not dereign the firſt warranty, as the caſe is in the 33 of H. 8. and where all dye but one; he which is in by ſurvivor, may deraigne the firſt warranty, 40 E.3.41.

By *Candiſh*, In a Formedon, if Tenant in tail with warranty enfeoffeth his ſon within age, and dyeth, he may dereign the warranty as heir to his Father, becauſe he is remitted, but if he were enfeoffed at full age he ſhall not dereigne it as heir, but as Aſſign. Note the diverſity, 40 *Edw.* 3. 44.

One Coparcener being vouched, prayes in ayd of the other who was within age, and that the plea may ſtay, the demandant ſaith, that the partition is deſtroyed by the feoffment of the Grandfather to the father of the Vouchee, and yet by the Court hee ſhall have Ayde, 43 *Edw.* 3. 23.

Fulthorp, A man may have *Warrantia chartæ* becauſe hee fears to be ſued, and recover *Pro loco & tempore*, but no execution ſhall be awarded, but if after he be outed, he ſhall have his warranty upon the firſt Recovery.

Portington, In a *Precipe quod Reddat* the Tenant voucheth, the Demandant recovers, and the Tenant over in value, there the Tenant ſhall never have execution, if the Demandant take not execution againſt the Tenant, for he is not to loſe, and the ſame Law is of a Recovery in a *Warranntia Chartæ*, and by *Paſton* and others, a lawfull entry or Recovery made or had by a ſtranger by an elder title, before that which the Tenant hath vouched in a *Precipe quod reddat*, or before requeſt of Warranty made in aſſiſe, ſhall defeat the warranty, contrary after voucher or requeſt made. Otherwiſe of a releaſe made by him who hath entred lawfully. for that doth not determine the warranty, for the poſſeſſion continues as to that reſpect, 21 *H.* 6. 15. 23 *H.* 6. 22.

A man ſhall not take advantage of a warranty which is deſcended upon anothers poſſeſſion in which it was not made, as the Lord by Eſcheat, he ſhall not take advantage of the Warranty made to the Tenant, 29 *aſſ.* 34. and in an Aſſiſe by *A. B.* the Tenant ſayd, that the mother of the Plaintiff Tenant in Dower did leaſe the land to her villain with warranty, whoſe heir the plaintiff is, and demands judgment &c. and becauſe that he ſhewed not that the Tenant in Dower died during the ſeiſin of the villain; ſo that the collaterall warranty might diſcend upon the poſſeſſion of the villain, ſo that the right was extinct in his poſſeſſion: Therefore the Aſſiſe was awarded, and *Sic vide*, that the warranty which deſcended in another poſſeſſion who is in, in the poſt, as here, from the Lord of the villain, doth not bind, and ſo by the Court, if he had ſhewed that the warranty had bound, and the Plaintiff barred againſt the villain, he had now been barred, and *Sic vide*, that the Lord may rebut by warranty diſcended in the poſſeon of his villain, 22 *Aſſ. p.* 27.

By *Schard*, If land be warranted to a man, it is certain that his heir ſhall not have the warranty unleſs that he be named, no more the heir of the aſſign. *Stone* contrary, for that right which is in the Father, deſcends to the ſon, whereupon *Schard* ſayd, we had not the land by diſcent, 19 *E* 2. *Fitzh. warranty* 85.

He in Remainder being received upon default of the Tenant in tail after poſſibility, &c. pleaded warranty and admitted, but for other cauſe, it was holden no bar, 45 *E* 3 18. according, 38 *Ed.* 3. 32.

Tenant in tail makes a feoffment to the Father and the Mother, and to the heirs of the Father with warranty, the Father dyes, their heir hath the poſſeſſion

poſſeſſion of the Land, and rebutts, but voucheth not during the life of the mother, 11 *E.*3.*age* 6. *Per Stouff*, but if he had come to the poſſeſſion by the ſurrender of the mother, it ſeems clearly that he ſhall vouch.

If I enfeoff one, and warrant the land againſt all men, and do not ſay that it ſhall be to the feoffee and his heirs, yet this enſues the words of the feoffment, 22 *E.*4. 55: *Kebble* and *Jenney* Juſtices, and 12 *Ed.*2. *Stath.* Warranty agrees adjudged a good barr, *Fitzh. voucher* 262. agreeth, and by this warranty he and his heirs ſhall be bound to warranty, as if they were named.

A feoffment is made to two, and warrants *In forma prædicta*, it ſhall be tended to them, their heirs and aſſignes by all the Juſtices. And *Hancke* ſayd, he could ſhew this adjudged, and that upon Livery made in the time of *E.*2. that the warrant is good by the manner, 14 *H.*4. 13. *Perkins* 54 accords, that he ſhall be bound and his heirs &c.

Feoffment with warranty to the feoffee, *& haredibus prædictis*, this ſhall be to the heirs of the feoffee, *Perkins* 41.

If Tenant in tail hath warranty, and is diſſeiſed, and one who hath an elder title recover by Aſſiſe againſt the diſſeiſor, the Tenant in tail hath no remedy for the warranty againſt the Donor, 4 H.7:2. *Jay.*

It ſeems by *Skreen*, 3 H.4. 1. That without re-entry this Tenant ſhall not have advantage of the warranty to his Anceſtors Eſtate 46. E. 3. 18. this is to rebut, not to vouch.

It ſeems by the book, 29 *Aſſ.* 34. The Lord by Eſcheat ſhall take advantage of the warranty of him that is dead, *Quære*. But it ſeems otherwiſe there if he which made the warranty ſurvive him who dyed, &c. then it is no bar; 18 *Ed.*3. 29. That in the firſt caſe he is not barred.

The Aſſign rebuts by warranty, although he be not named, for it runs with the inheritance, not ſo of voucher, by *Hill*, 14 H.4. 5. 21 H.7. 9. *Poll* agreeth to the Diverſity, 19 *E.*3. 29: *Th.* agreeth to the diverſity; that he ſhall rebut, but not vouch, without the word *Aſſigne*.

If Feoffee with warranty releaſeth to me his Diſſeiſor, I ſhall be his Aſſignee to rebutt, 26 *Aſſ.* 39 *Thorpe*, for the ſecond or third aſſignee, hath pleaded warranty, if he be Tenant in aſſiſe; and ſo was the opinion clearly.

A woman doth purchhaſe a ward, and takes a husband and dyes, the husband ſhall have the warranty of the Feoffor of the wife, becauſe it is a chattell lawfully veſted in him, yet he is a ſtranger thereto, ſo it is if he be be ſued in the life time of the wife, 30 *E.*3. 6. and 14. adjudged 29 *Edw.*3. *Stath.* warranty, the husband pleads this, *vide* 29 *E.* 3. 48.

Feoffee with warranty makes a feoffment with warranty, and takes back the Eſtate to him and to his wife in fee, and becauſe the husband and wife being ſued they may vouch the husband, and by ſuch a way to come to warrant, for he is privy thereto; the opinion there was, that they ſhould rebut, 26 *E.*3. 56. 25 *E.*3. 50. accordeth.

The Aſſign of an heir rebuts by a warranty to the feoffee, his heirs and Aſſigns,

Aſſigns. 14 *Edw.* 3. *Fitzh. warranty* 23. 7 *E.* 3. 34. accor. and adjudged.

The Aſſignee of an Aſſignee rebuts by warranty to the feoffee and his aſſignes, 38 *E.* 3. 21.

The Aſſignee of an Aſſignee relyeth upon the warranty of the Anceſtor of the plaintiff in an Aſſiſe in barr, and *Schard* notwithſtanding did award the Aſſiſe, 24 *E.* 3. 32.

One did plead a feoffment made by the Anceſtor of the Demandant, with warranty to *J.S.* whoſe eſtate he hath, to him and his heirs, and bound him and his heirs to warrant, and if you be ſued of another, &c. judgment, if you can demand any thing, and becauſe he hath ſayd that he will warrant you againſt another, and for that cauſe ought to be a barr, he ought to ſhew how he was Aſſignee, he ſhewed how he was heir of the Feoffee, &c. 8 E: 3: 10:

If warranty be made to a man, his heirs and Aſſignes, the heir of the aſſignee ſhall rebut thereby: And *Hill* ſayd that he ſhall vouch, 19 *Ed* 3: *Fitzh war.* 58 agrees 13 E 1. 93: *war. acc*: of the voucher adjudged, *vide* 10 E. 3. 9.

Collaterall warranty or lineall being made to one who hath the poſſeſſion is good & ſhal bar during the poſſſion, but if the diſcontinuee enter upon that poſſeſſion (*ſcil.*) becauſe that he diſſeiſed him, or that he had broke the condition &c. the warranty is taken away, *Litt. fol.* 168: *plac.* 50. yet the releaſe enures to them.

LIII. *How Warranty ſhall be pleaded.*

IN an Aſſiſe by *A*: *B*: The Tenant ſayd, that the Mother of the plaintiff Tenant in Dower, leaſed the land to her Villain with warranty, whoſe heir the plaintiff is, and demands judgment &c: and becauſe that the Tenant in dower dyed during the ſeiſin of the villain, ſo that the collaterall warranty might diſcend upon the poſſeſſion of the villain, ſo that the right was extinct in his poſſeſſion: Therefore the Aſſiſe was awarded, and *ſic per Curiam*, if he had ſhewed that the warranty had bound, and the plaintiff barred againſt the villein, he hath been barred now, 22 *Aſſ. p.* 37. and ſo in an Aſſiſe, the Tenant pleads releaſe with warranty by the Anceſtor of the plaintiff made to *W. M.* by which the right is extinct, no plea, without ſhewing how the action of the plaintiff was once extinct by the warrrnty made to *W.* whoſe eſtate he hath, and then good, 22 *Aſſ: p.* 69. So he that pleads warranty of *I. N.* whoſe heir the Demandant is, and ſheweth not how he is heir, this is error, but if hee ſhew how he is heir, and the conveyance not to be ſeen, yet if he be heir in deed, this is ſufficient, *viz.* If he ſay the ſon of *I* whereas he is in truth the ſon of *W.* *Quod nota bene*, 37 *Aſſ. p.* 5.

In Treſpaſs *Vi & armis*, The Defendant ſayd, That the place is four acres,

res, of which *I. S.* was ſeiſed in fee, to whom *R.* the Anceſtor of the plaintiff whoſe heir he is, releaſed all his right, with warranty by this Deed, &c. whoſe eſtate the Defendant hath, and demands judgment, if againſt this warranty &c. *Quære*, for he conveyed not his title by feoffment, nor otherwiſe, and *Quære* if *I. S.* were diſſeiſor, and he which had the right hath releaſed unto him, and the Defendant diſſeiſed *I. S.* and had the deed, if he ſhall plead this, by reaſon of his poſſeſſion, and by *Pigot* and *Bridges*, it is no plea, but *Starkey* contrary, *Ideo quære*, 21 *E.* 4. 18.

The Tenant pleads in bar of an Aſſiſe, that the plaintiff himſelf in the ſeiſin of *W.* whoſe eſtate he hath, by Charter did give, grant, and confirm the ſame Tenements to him and his heirs, and bound him and his heirs to warranty, and ſayd moreover, that if he were ſued by a ſtranger, that he ſhould be bounden to warrant, as the Aſſign of *W.* and demanded judgment, and ſhewed forth the Charter, and the Deed of Aſſignment, and the Court did compell him to ſhew how he was the Aſſign of *W.* 10 *E.* 4. 41.

In a Formedon in Diſcender againſt *W. Trew*. One *I*, Father of the Demandant, releaſed and quite claimed to this *W.* and one *R.* to them and their for ever with warranty, and demands judgment, if &c. And ſayd that he had aſſets &c. *Gayne*, He ſheweth not how he hath the eſtate of *R.* whether by ſurvivorſhip, or in other manner, ſo that he was ſole voucher, and alſo he doth not barr us but for the moyety, according as the Tenancy was in him, when the Deed was made. *Schard.* He is not here in as in way of voucher, but to bar the Action, and you ſuppoſe him Tenant of the Tenements by your Writ, by which he ſhall be received to plead in barr. *Gayne* pleaded nothing by diſcent in fee, and others contrary, 10 *E.* 3. 47. *Fitzh. warranty* 56.

In an Aſſiſe of Common of paſture, the Deſendant pleaded in barr by a Deed of the Father of the Plaintiff, by which he had releaſed and confirmed to the Tenant of the Land to hold in ſeverall with Warranty, the Plaintiff demanded judgment, ſince that he had brought the Aſſiſe of his own ſeiſin, and hath alledged nothing but the Deed of his father, which extinguiſheth not his right, if he ſhew not that his Father had right in the Common at the time &c. of the making, and this he hath not done, and the Warranty in this caſe falleth not in Barr, for which we pray the Aſſiſe: *Banck*, If he demand the land, ſhall the Deed of his Fathers Wil lye againſt him in barr without Warranty, *quaſi dicat non*, no more at this time, ſithence that the Warranty barrs not in this caſe, and afterwards he awarded the Aſſiſe, for that cauſe, 22 *Aſſiſe p.* 38.

The Warranty of every Anceſtor of them who may have claimed eſtate before him againſt whom the Warranty is pleaded, although that they claim not the eſtate, nor no mention is made of them in the VVrit, is not a barr without Aſſets, for it is lineall, and this ſhall be ſhewed by the Tenant in his bar, (*Scil.*) how he might have been his Heir, as where the Tenant in taile hath iſſue two ſons, and diſcontinueth, and the elder

doth

doth releaſe with warranty, and dies without iſſue, this is lineall to the younger, *Cauſa qua ſupra*, but if the elder releaſe with warranty, and dieth, living his father, it is otherwiſe, for then he was not any wayes in caſe that he might claim the eſtate, and ſo is the diverſity, by *Schard*, and *Wilby*, 35 *Ed.* 3. *Fitzh. warranty* 73.

In Treſpaſſe, if the defendant ſay, that the place in which &c. was his Freehold at the time &c. now if the Plaintiff will conclude him ſo to ſay, by reaſon of a Feoffment of the anceſtor of the defendant whoſe heir he is, and with warranty &c. and rely upon the warranty, it behoves him to ſhew the deed thereof, notwithſtanding, that it be in a writ of Treſpaſſe &c. *Perkins* 138. *d.*

A woman brings *ſur cui in vita* of Seiſin of *Alice* her mother, ſuppoſing that the Tenant had not entred till after the Leaſe which *Ri.* the husband of *Alice*, made *Scot*, after the death of *Richard*. *Alice* was ſeiſed of the ſame Tenements in fee. and gave them to one *W.* whoſe eſtate the Tenant hath, to him and his heirs for ever, and binds him and his heirs to warranty. *Baſſet*, ſhew how have you his eſtate, and how doth the warranty extend it ſelf to you? *Scot*, *Alice* did alien to *W.* the anceſtor of the Tenant, whoſe heir he is &c. *& alii è contra*, *H.* 8. *Ed.* 3. 10 *Fitzh. warranty* 49.

In a Formedon in diſcender by *W.* againſt one *C.* of a Grant made to *B.* and *C.* his wife. *Belk* *R* great Grandfather of *W.* now Demandant, gave theſe Lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C* dieth, and *B.* the husband ſurvived, whoſe eſtate the Tenant hath, and demanded Judgment, if againſt the deed of his anceſtor &c *Cheld*, this *Rich.* is the ſame perſon which we have ſuppoſed, that gave in Fee Tail to the ſame *B.* and *C.* and ſo his plea is contrary to our writ, by which we will aver our Writ. *Belk.* I rely onely upon the warranty. *Cheld* but then how have you his eſtate? *Thorp*, the greateſt ſtranger in the world ſhall be received by you, to bar by the warranty, without ſhewing how he had his eſtate, but in caſe of voucher it ſhall not be ſo, wherefore give an anſwer. *Cheld.* not the deed of *R.* our anceſtor, *& alii contra*, 42 *Ed.* 3. 19.

If I vouch two, and ſhew their deed to bind them, and the one confeſeth the Deed, and the other deems the deed, upon which I ſue to iſſue, and it is found againſt me, I ſhall recover againſt the other but the moiety, yet if I had demurred upon him, upon his confeſſion, and not anſwered to the other, I ſhould have recovered the whole warranty againſt him, by *Stone*, and the ſame Law is, where I vouch two, and the one ſaith that he is within age, and I ſay, that he is of full age, and it is found for him, I ſhall recover againſt the other but the moiety, although that he do acknowledge the deed, and I ſhall be barred againſt the infant for ever, *P.* 10 *Ed* 3. *Fitzh. warranty* 75.

LIV. *How a man may qualifie the force of a warranty by his Deed.*

WHere a man gives Lands in Tail, and warrants the Land to him, his heirs and aſſigns, and he aliens in fee, and dies without iſſue, this warranty ſhall be a bar againſt the Donor in a Formedon, in remitter. *Br. Formedon* 15.7 *Ed.* 3. 35. 46 *E.* 3.4. *Concord.*7 *E.*3. 34. *Fitzh. warranty* 44. 10 *Ed.*39. *Fitzh. warranty* 52.

Note, that four acknowledged certain tenemens to be the right of *R.* H. and grants the ſame Tenements to *R.* H. and *M.* his wife, and to the heirs of *R.* and would have them and their heirs bound to warranty &c. and the Court would not permit them, but bound them, and the heirs of one to warranty &c. 21 *Ed.*3.27. *Fitzh. warranty.*31 *concordat. per Cur,*24 *Ed.*3.66. *Fitzh. Warranty* 50. but there, becauſe it was of Land in Gavelkind, the warranty was accordingly.

By all the Juſtices in the Exchequer chamber (except *June*) that a man would warrant Lands to bar him and his heirs, but not to be vouched, nor to render in value, he may warrant for him and his heirs againſt the Dean of *P.* and his ſucceſſors, or the like, who have no title, or with this clauſe *Proviſo ſemper*, that the party nor his heirs, ſhall not vouch the Feoffor nor his heirs, nor ſhall recover in value; for he may yet rebut and plead the ſame in bar, and therfore the *Proviſo* doth not reſtrain all the ſtrength of the warranty, and therefore it is not void, and he may make the warranty abſolute, and make a defeaſance by Indenture, that if he vouch, that the warranty ſhall be void &c. and this is held good by all the Juſtices, and the other way alſo, by all but *June*, yet Sir *Robert Brudnell* late chief Juſtice of the Common Pleas deviſed another warranty, which is now uſed, (*ſcil.*) that the warranty for him and his heirs ſhall warrant againſt him and his heirs, and by this the Feoffee ſhall rebut, but not vouch, 7 *Hen* 2.43.

If a man infeoff with warranty, provided that the Feoffee nor his heirs ſhall never have in value by force of the warranty, this is a good condition, becauſe that the Feoffee may take advantage by rebutter, *Perkins* 142 *b.*

Vide the Title of Counterplea of warranty, or of binding. 1. Where a man may vouch by warranty, which begins by diſſeiſin, and yet he ſhall not be barred by ſuch warranty in an action brought of the ſame Land: and ſee there the entry into the warranty, ſaving to him his action, and entry into the Warranty, as he who is to have nothing by deſcent, 50 *Ed.*3.12.

A man ſeiſed in right of his wife aliens in fee, and the heir of the wife confirms the eſtate to the alienee with warranty in the life of his mother, and after the death of his mother he was barred by the warranty in a *ſur*

cui in vita, otherwiſe it had been, if the clauſe of warranty had not been in the deed, *tunc factum non valeret*, 10 *Ed.* 2. *Fitzh. warranty* 82.

The force of Warranty in a deed.

LV. *The force of lineall Warranty.*

HE which demands fee tail by writ of formedon in *Deſcender*, ſhall not be bound by a lineall warranty, but where he hath aſſets by deſcent in fee ſimple from the ſame anceſtor, who made the warranty, *Littleton fol.* 160. *pla*, 18. agreeth 10 *Ed.* 3. 47. *Fitzh. warranty* 56. and *in formedon in deſcender*, of a gift made to his Grandfather in Tail, and he made the deſcent to *N.* as ſon and heir, and from *N.* to the demandant, as ſon an heir. *Bacon*, *N.* your father enfeoffed us in fee by this deed with warranty, Judgement, if the action. *Linc.* you ſay not that we have aſſets by deſcent, and the Statute doth reſtrain the alienation of the Tenant in Tail, Judgment &c. *Schard*, the Statute ſpeaks of him to whom the Land was given, but ſithence that *N.* is the ſecond in the entail, you cannot ſay he is reſtrained by the Statute, *Herl*, you may try the Law, if you will loſe your Clients Land, and I tell you that the intent of the Statute was, that the Land ſo given ſhould continue in the blood, notwithſtanding the alienation of none that was in the line, for which cauſe was the Statute made by all the Councell, and in ſuch manner the Law hath uſed ſince that time, and we will not change the Law uſed ſince that time, whereupon he ſaid, that aſſets deſcended from *N.* and demanded Judgment, *ut ſupra* 5 *Ed.* 3. 19. *Fitzh. warranty* 59.

In a Formedon in diſcender, the Tenant pleaded the Feoffment of the Father of the Demandant with warranty, with this that he would aver that the demandant had aſſets by diſcent &c. and the demandant ſaid, he had nothing by deſcent, and the Jury ſaid, that the Father of the demandant nine dayes before his death, to diſavow the warranty, that the Heir ſhould not be barred by the aſſets, enfeoffed him who is now demandant of the Land, which is ſuppoſed he had by deſcent in fraud &c. wherenpon it was awarded, that this fraud ſhould give him no advantage, and that he ſhould take nothing by his writ &c. *M.* 34 *Ed.* 1. *Fitzh. warranty* 88. and where Tenant in Tail aliens with warranty and dieth, and aſſets deſcend to his ſon &c. his ſon ſhall be charged in a writ of warranty of Charters by the warranty, and ſhall be vouched. Adjudged by the Court, *temp. Ed.* 1. *Fitzh. warranty* 89. agreed by *Vavaſour* Juſtice, 21 *H.* 7. 39.

In a Formedon in diſcender, the Tenant ſet forth the deed of his anceſtor in Tail with warranty, and demanded Judgment, whether againſt the deed &c. *Gain*, they have not ſaid we have any thing by deſcent. *Pole*,

It

It needs not, for the deed bare date before the Statute, and the other cannot gainſay the deed &c. whereupon the Writ abated &c. 12 *Ed.* 3. *Fitzh. warranty* 34.

By *Newton*, if the aſſets be aliened, or recovered, the heir in tail ſhall reſort to his Formedon, notwithſtanding the lineall warranty, otherwiſe upon collaterall warranty, 19 H. 6. 59.

If Tenant in tail hath iſſue two daughters, and dieth, and the elder enter into the whole, and thereof maketh a Feoffment with warranty, and after dieth without iſſue, in this caſe the younger daughter is barred as to the moiety, and as to the other moyety ſhe is not barred, for as to the moyety which belongs to the elder, it is a lineall warranty, and as to the other a Collaterall warranty, *Littl. fol.* 160. *pla.* 16. whereto agreeth *Perkins* 98. *f.*

If I be diſſeiſed, and my brother releaſe with warranty, and entreth into Religion, his warranty ſhall bind me, although he be living, for I ſhall have his Land by deſcent, and by conſequence the warranty is deſcended, and it is ſaid in the ſame plea, that if a Parſon of a Church be diſſeiſed of the Land which he hath in right of his Church, that the Releaſe of his brother with warranty ſhall bar him for his life &c. in an aſſiſe &c. *P.* 34 *Ed.* 3. *Fitzh. warranty* 71.

Lineall warranty ſhall not be a bar to the iſſue in Tail without aſſets, by the equity of the Statute of *Glouc.* 11 *Ed.* 1. *Raſt. Recognic. Plowden* 127. 2.

LVI. *What ſhall be ſaid to be aſſets in a Formedon, with other actions to bar the heir.*

IN an aſſiſe by *Newton*, If Tenant in tail diſcontinue and dieth, and aſſets deſcend, and the iſſue alieneth the aſſets, and bringeth a Formedon, he ſhall be barred; otherwiſe it is where he aliens the aſſets, and afterwards debt or Covenant is brought againſt him upon his fathers deed. Note the diverſity, herewith agrees, 42 *Ed.* 3. 10. 19 H. 6. 4. 45. and 46.

Vide titulo formedon 40. aſſets by the Tenant in Tail taken in exchange, ſhall not bind the heir in tail, if the heir agreeth not thereunto, but waiveth the poſſeſſion, and yet it is otherwiſe of other land deſcended, 14 H. 6. 2.

If the demandant in a Formedon be barred by warranty and aſſets, although the aſſets be afterwards evict, yet the Tail is gone for ever, *Quære de hoc*, 3. 4. *P. & M. fol.* 139. *plac.* 32.

In a Formedon, the warranty of the anceſtor with aſſets deſcended &c. was pleaded in bar, and the Demandant ſaid, nothing by deſcent, the Jury found, that nine dayes before the death of the anceſtor, he with intent to hinder the heir of the aſſets, enfeoffeth him of the ſame Lands &c. by

fraud &c. whereby he was barred, for he ſhall not take advantage of the fraud, 34 *Ed.* 1. *Fitzh. warranty* 88. 12 and 13 *Eliz.* 295. *plac.* 16.

In a *Quare impedit*, by *Keble*, an advowſon is not aſſets in a Formedon, for it is not valuable. *Davers* and *Vavaſour* contrary, for every 20 l. by the year of an Advowſon ſhall be valued at 20 s. 5 H. 7. 32. *Pollard*, that it is aſſets, though it be no profit to him to whom it is aſſets, but a promotion for his friend, the which proves the fee to be in the patron, 12 H. 8. 9. *a.*

Homage nor fealty are not in aſſets in a lineall warranty, for they are not valuable, *Perkins* 52. *f.*

Rent deſcended to the Iſſue in Tail by way of extinguiſhment ſhall be ſaid to be aſſets, *Perkins* 54. *f. Fitzh. Aſſets war.* 29.

The Statute of *Glouc. cap.* 3. grants that upon the alienation of the Tenant by the courteſie, if the warranty be pleaded againſt the heir, if he hath aſſets by deſcent, he ſhall be barred, but if aſſets be not then deſcended, but afterwards do deſcend by the ſame father, then the Tenant ſhall have recovery of the Seiſin of the mother by a writ of Judgment, which ſhall iſſue out of the Rolls of the Juſtices before whom the Plea was pleaded &c. and by the equity of the ſame Statute it is taken, that if the warranty of the Tenant in Tail with aſſets be pleaded in bar, where he hath not aſſets, but afterwards aſſets deſcend to the iſſue, the Tenant ſhall have a *Scire facias* to have the aſſets, and not the Land Tailed, for if he ſhould have the Land tailed, and hath aliened the aſſets, the iſſues inheritable to the entail, ſhould afterwards have their Formedou, and recover the land entailed, becauſe that to make a perpetuall bar againſt the iſſue of that which the Feoffee with warranty ſhall have, it was held more reaſonable to give the aſſets, then the Land in Tail to the Tenant, and upon this reaſon he had a *Scire fac.* for the aſſets, and not for the Land in tail, *Plowden* 110. *a.*

LVII. The force of Collaterall warranty.

By *Littleton*, Collaterall warranty is a bar to him that demands a fee, and alſo to him that demands fee tail, without any other deſcent in fee ſimple, ſaving in caſes which are reſtrained by the Statutes, and ſome other caſes, for certain cauſes, as ſhall hereafter be mentioned, *Lit. fol.* 160. *pla.* 19. and by 19 *H.* 6. 59. Collaterall warranty deſcended ſhall bind the right, and extinguiſh the tail and the right: ſo that a man cannot be remitted after it doth deſcend, for lineall warranty with aſſets is a bar to the entail, but collaterall warranty is an extinguiſhment of the tail, ſo that although the Tenant in tail, or his iſſue enter after this, and die ſeiſed, and his heir be in by deſcent, yet he ſhall not be remitted, for the reaſon aforeſaid.

Tenant

Tenant in Taile of an Advowſon in groſſe, grants the ſame to *W. N.* in fee, and the anceſtor collaterall to the Tenant in Taile doth releaſe with VVarranty, and dieth without iſſue, the Tenant in Tail dieth, the Church is void, *M. N.* preſents, and the iſſue in tail brings a *Quare impedit*, the other pleads the releaſe with warranty, and the dying without iſſue, and it was adjudged a good bar, for that he claimed the inheritance, otherwiſe it is if he claimed for term of years, 15 *H.*7 9.

Tenant in Tail of an Advowſon in groſſe, and a ſtranger doth preſent by uſurpation, the ſix months paſſe, and the uſurper grants the advowſon to a ſtranger in fee, and the Tenant in tail dieth, and the collaterall anceſtor of the iſſue in Tail releaſeth to the Grantee with warranty and dieth without iſſue, and the opinion of all the Juſtices of the Common-Pleas was, that the iſsue in Tail ſhould be barred, becauſe the Grantee had the fee at the time &c. and by *Vavaſor*, if Tenant in Tail of a Rent grant the ſame in fee, and an anceſtor collaterall releaſeth to the Grantee with warranty, and dieth without iſsue, this is a bar, and he ſaith, that all his fellows were of the ſame opinion. But if Tenant in Tail of Rent grant the ſame land in fee with warranty, this ſhal be no bar, if the iſsue will diſtrain, otherwiſe it is, if he bring a Formedon and admit the diſcontinuance, and this is where aſsets is deſcended with the warranty: but if Tenant in Tail of an Advowſon in groſse grant the ſame in fee and dieth, and his collaterall anceſtor releaſe with warranty, and dieth without iſsue, the Juſtices ſaid, that this ſhall be a bar alſo, but they ſaid, it was not ſo clear as the uſurpation, becauſe the uſurper hath the fee by uſurpation, 21 *H.*7.39.

By *Finchden*, If there be Tenant in Tail, the remainder to *B.* in Tail, the remainder to *C.* in Tail, and the Tenant in tail dieth without iſsue. *B.* in the firſt remainder makes a feoffment with warranty, and hath iſſue, and dieth, and after the iſſue dieth without iſſue, and *C.* in the ſecond remainder is heir to him, he ſhall be barred by this warranty, although that the iſſue of *B.* ſhall have nothing by deſcent, ſo that he was not barable. *Kirton* Serjeant was of a contrary opinion, 41 *Ed.* 3. *fol.*7.

He which pleads collaterall warranty ſhall not conclude to the action, 7 *Eliz.* 27. *H.*8. *fol.*22. *Fitzh.* that a man may plead warranty and demand judgment, if Action, in Treſpaſſe.

Although the iſſue, after collaterall warranty cometh to the Land by deſcent, as by a Feoffment from his father after the warranty, he is not remitted, nor ſhall put out the Leſſee of the Leaſe of him to whom the warranty was made, for ſaith *Dyer*, the warranty binds the right, 7 *Eliz.* *Bendloſe* ſaith, that a man cannot make a title by collaterall warranty.

In a forcible entry upon the Statute of 5 *Ri.*2. the defendant pleaded a gift in Tail from his mother, the Plaintiff ſaith, that after the death of his father, *J.* S. was ſeiſed, to whom his father releaſed with warranty, and it is a good title, 18 *Ed.*4. *fol.*13.

It ſeemeth, that a man may make a title at large, in an aſſiſe againſt a collaterall

collaterall warranty, for that it giveth not the right, 16 *Aſſiſe*, in aſſiſe the Plaintiff may make his title by collaterall warranty.

Littleton fol. 159. *pla.* 14. ſaith, If the middle ſon of Tenant in Tail releaſe to the diſcontinuee with warranty, and the father dieth, and he die without iſſue. This is collaterall to the elder ſon, but if the elder ſon dieth, it is but lineall to the younger, and it ſhall not be a bar, and if the warranty had given the right, then nothing deſcended to the younger.

A man recovers againſt his mother, and before execution the mother alieneth with warranty and dieth, it ſhall be a bar, 16 *Aſſ.* 16.

Littleton fol. 163. *pla.* 32. *&* 33. ſaith, That the warranty by Tenant by the courteſie, or Tenant in Dower, or for life, upon a Feoffment by them made, ſhall bar him in Reverſion, if it deſcend unto him, and yet his entry is lawfull &c. if this warranty had not been.

In an Aſſiſe it was in manner agreed, That if a man releaſeth with warranty to my Tenant for life, the Reverſion to me and dieth, and I ſue his heir, yet I ſhall not be barred, for the Reverſion continues in me, but if my Tenant for life be diſſeiſed, and my anceſtor releaſeth with warranty to the diſſeiſor, and dieth, this ſhall be a bar, 45 *Ed.* 3. 21.

LVIII. *The expoſition of the Statute of Weſtminſter* 2. ca. 2.

FOrmedon in Reverter, the Tenant pleaded a Feoffment of one *T.* anceſtor of the demandant, with warranty in Bar. *Th.* and was Tenant in Tail, whoſe alienation was reſtrained by the Statute. *Pole*, you demand the fee &c. and the warranty is at the common Law. *Th.* The Statute willeth, neither by Deed, nor &c. by which words every manner of Deed is extinguiſhed equally for him in the remainder, deſcender, and reverter, and adjourned. 15 *Ed.* 3. *Fitzh. warranty* 27. *&* 41 *Ed.* 3. *Fitzh. warranty* 16. *In Formedon* in Reverter, ſuppoſing that his father gave the Land, he makes the deſcent to him. *Bell*, One *Piers* his uncle was ſeiſed, and enfeoffed our anceſtor, and after releaſed to the ſame anceſtor with warranty, and bound him and his heirs to warrant, and the demandant is heir to *Piers*, Judgment &c. *Kirton*, This *Piers* is the ſame perſon to whom the Tenements were given in Tail, and the father of the demandant overlived *Piers*, and the Statute willeth that the iſſue in Tail, nor he in Reverſion ſhall not be barred by the alienation of the Tenant in Tail, by which, judgment, whether the Deed of the Tenant in Tail &c. *Belk.* The Statute willeth, that the Donor nor his heirs, nor the iſſue in Tail ſhall not be barred &c. and this is intended between ſtrangers, and not between privies, for the miſchief at the common Law was ſuch, that after iſſue he that was a ſtranger, and not privy in blood, ſhould be barred by his Deed, and for this cauſe was the Statute made, for that this was againſt the will of the Donor, that the iſſue ſhould be barred, and

alſo

the inconvenience that the Donor ſhould be barred there, where he was not of the blood, but a ſtranger, that the iſſue nor the Donor ſhould not be barred, by which, ſithence that he is privy, and demands the Fee-ſimple, and the warranty continues at the Common Law he ſhall be barred &c. *Kirton*, The Statute ſpeaks neither of Privies, nor ſtrangers, and the Law is ſuch, that the iſſue ſhall avoid the deed.

Finch, To what intent do you ſay, that the Donor ſurvived? *Kirton*, We underſtood that *Piers* was iſſue of the Donor, and then the Caſe is the better for us. *Finch*, You ſay true, for one way it were the better, and it is ſaid in our year-books, that Juſtice *Herle* was at the making of this Statute, and he ſaith, For that the Law was, for that after iſſue, that the Donor who was a ſtranger who ſhould be barred, and for this miſchief was the Statute made: for which cauſe ſithence the Statute was made for this miſchief, and you are out of the miſchief, and out of the Statute, it is reaſon you ſhould be barred, it was adjourned, ſee 15 *Ed.* 3. the like Caſe, and 5. 7. 10. and 27 *Ed.* 3. See concerning warranty in the Title of Counterplea of warranty divers times &c. and 7 *Ed.* 3. 48. *Fitzh. Warranty* 46. By *Trew*, the Statute ſerves not, but for the iſſue in Tail, and him in the reverter. *Parn.* The Statute willeth, that the will of the Donor ſhall be obſerved, and it is the Will of the Donor, that the Tenements remain to him &c. as well, as it ſhall be, if the Uncle ſaved the reverſion to himſelf. *Herle*, the Statute willeth, that they to whom the Tenements are given, not having power to aliene, ſo that it deſcends not to the iſſue, or return to the Donor, and in this point the Statute willeth, that the Donors wil lin all things be obſerved but the Statute ſaith nothing of him in the remainder. *Scot*, If the remainder of the Uncle be entailed to *F.* in fee Tail, he ſhall not be bound by the Deed of *P. Sch.* the Law is otherwiſe, for he in the remainder, what eſtate ſoever is demanded, he is not helped by this Statute &c.

Formedon in deſcender, of a Deed made to his Grandfather in Tail, and makes the deſcent to the Father, and from the Father to the Defendant. *Hill*, One *R.* your uncle, brother to your father, whoſe heir you are, enfeoffed us of the ſame Land, with warranty, Judgment, if againſt the warranty. *Clopt.* This *R.* was brother to our father, and iſſue in tail, and by poſſibility of the Tail in his life was inheritable, and the intent of thoſe which made the Statute was, that they which were iſſues in the entail, ſhould not aliene, and as ſithence that he had pleaded no diſcontinuance by the ſame anceſtor, judgment &c. *Belk.* when he that was the younger ſon made the warranty, if in his life time, you which are the iſſue of the elder ſon had died without iſſue, this warranty ſhall not be a bar againſt the iſſues of the younger ſon, without a diſcontinuance, for he was at one time inheritable by the entail, and that lawfully, but againſt you it ſhall be a bar, for you were all in another courſe, then his iſſues ſhall be, wherefore be you well adviſed. Afterwards he pleaded, not the Deed of his Uncle &c. and others were of another opinion, and *ſic ad patriam*,

patriam, *T.*8.*R.*2. *Fitzh. Warranty* 101. And *Per Stone*, The Statute reſtraines the power of the iſſue in taile to alien in prejudice of him in Reverſion by expreſs words. Then a *Fortiori*, a man ſhall intend his power to be reſtrained to prejudice of the iſſue in taile, where the Statute reſtrains the power of the Donee: and no man can intend the ſtate of them, who are to be inheritors by reaſon of the ſame gift to be of another Condition then the eſtate of them to whom the Tenements were given. *Schard W.* the brother of the Demandant releaſed to us by the Deed (as above) and that Aſſets in lands deſcended unto him in fee, after the death of the ſaid *W.* &c. 4 *E.*3. 28. *Fitzh. Warranty* 57. *Concord.* 20. *E.*3. *Fitzh. Warranty* 39.

Formedon in deſcender of a Grant made to his Grandfather in taile, and makes the diſcent to *N*, as ſon and heir, and from *N.* to the Demandant as ſon and heir,

Bacon, Your Father enfeoffed us in fee by Deed with Warranty, Judgment, if the Action &c.

Linc. You ſay not that we have Aſſets by diſcent, and the Statute reſtraines the alienation of the Tenant in Taile, by which Judgement, &c.

Schard, The Statute ſpeaks of him to whom the Lands were given, but ſithence that *N.* is the ſecond in the intail, you cannot ſay that hee is reſtrained by the Statute.

Herle, You may try the Law if you will loſe your Clients Land, and I tell you, That the intent of ſuch as made the Statute was, that the Land ſo given ſhould continue in the bloud, notwithſtanding the alienation of none which was in the line, for ſuch cauſe was the Statute made by all the Councill, & in ſuch manner the Law was practiſed ſince that time, & now we will not change the Law uſed ever ſince that time: whereupon he pleaded that Aſſets did diſcend from *N.* and demands Judgment as above, 5 *E.*3, 19. *Fitzh. War.* 59.

LIX. *The force of Warranty by Diſſeiſin.*

IN Formedon, the Tenant pleaded a Feoffment with Warranty of the Granfather of the Demandant, whereas the Deed was made to his Father, the Demandant ſaid, that the Grandfather was Donor, and entred upon his Father, who was the Donee, and made a Feoffment with warranty preſently, and ſo the Warranty commenced by diſſeiſin, and it was held a good Replication, and ſo ſee, that collaterall warranty which began by diſſeiſin, doth not bind, 46 *E* 3.6. *Concord.* 43 *E.* 3.7. and 50. *Edw.*3.12. A man may vouch by a Warranty begun by Diſſeiſin, and hee ſhall not be barred by ſuch Warranty in an Action brought for the ſame land.

Formedon

Formedon of a gift made to the Father: *Blaike*, Your Grand-father by this deed which is here enfeoffed us with warranty, judgment if &c. *Th.* The Grand-father at the ſame time held at the Will of our Father, without that, that he had any other Eſtate, and ſo by that deed he could not bar us &c.

Blaike, It amounts to ſo much as that nothing paſſeth, and iſſue taken upon it.

Hill, Another thing you will not plead. *Blaike*, He was ſeiſed of the Frechold, ready &c. Others contrary, 17 *E.* 3. 41. *Fitzh. warranty* 21 *Concord.* 43 *E.* 3. 7.

If one that hath no right entreth the houſe of *A.* of *B.* & enfeoffeth with Warranty Barretors and Extortioners in the Countrey, for to have maintenance of them of the ſame houſe by a Deed of Feoffment with Warranty, by force of which the ſayd *A. of B.* dare not dwell in the ſame houſe, but goeth out of the ſame houſe, this warranty beginneth by diſſeiſin, becauſe ſuch a Feoffment was the cauſe that the ſaid *A. of B.* left the poſſeſſion of the ſame houſe, *Lit.* 157 *b. pla.* 6.

If the Father and ſon purchaſe certain lands and Tenements to have and to hold of them joyntly &c. and after the Father alieneth the whole to another, and bindes him and his heirs to warranty *&c.* and after the Father dyeth, this Warranty ſhall not bar the ſon of the Moyety which was made unto him of the ſaid Lands and Tenements, becauſe, as to that Moyety which was made to the ſon, the Warranty began by Diſſeiſin &c. and herewith agree *Newton* and *Paſton* 22 *H.* 6 51. and *Litt.* 157 *pla.* 5: But by *VV. Herle*, it was apjudged, that if he ſhall recover the whole in an Aſſiſe brought againſt the Alienee of the Father, 13 *E.* 3.

LX. *Warranty by Deviſe and Teſtament.*

IF Tenant in taile be ſeiſed of Lands deviſable by Will accord ng to cuſtome *&c.* and the Tenant in taile doth alien the ſame Tenements to his Brother in fee, and hath iſſue and dyeth, and afterwards his Brother deviſeth by his Teſtament the ſame Lands to another in fee, and bindeth him and his heirs to warrant &c. and dyeth without iſſue. It ſeemeth that this Warranty ſhall not bar the iſſue in tail, if he will ſue his Writ of Formedon, becauſe this Warranty doth not diſcend to the iſſue in taile, inſomuch as the Uncle of the iſſue was not bound by force of the ſame warranty in his life time, nor for that he coud not warrant the Tenements in his life time, for that the deviſe could not take any execution or eff & till after his death, and for as much as the Uncle in his life time was not bound to warranty, ſuch Warranty could not diſcend from him to the iſſue in tail, *&c.* for nothing can diſcend from an Anceſtor to his heir, but the ſame that was in the Anceſtor, *Litt. fol.* 166. *plac.* 43.

LXI. *Warranty by* Acquietabimus, *or Will acquit.*

IN an *Audita querela*, it is agreed, that Warranty doth imply in it ſelf Recovery in value, and that he which doth covenant to acquit, ought to acquit the party in fact, & that without the words, that heſhal render in value or acquit, 46 *E.*3.28. and 6. *E.*2. *Fitzh. Voucher* 258. the clauſe of warranty was this, I and my heirs, againſt all men will acquit and defend for ever, and it was adjudged by *Berry*, that it was a Warranty, but *Litt. fol.* 166. ſayth, that the word *VVarrantizabimus*, only makes the Warranty.

LXII. *Releaſe with Warranty.*

A Man doth leaſe Tenements for life, the Remainder to *H.* in fee, the Tenant for life grants over his eſtate to one *R.* in whoſe poſſeſſion an Anceſtor collaterall of H. releaſeth with Warranty and dyeth, the firſt Tenant for life dyeth, and H. enters, and *R.* outs him, & H. brings an Aſſiſe, and the Court was of opinion that H. was not barred, becauſe that by the Releaſe, the eſtate of *R.* was not enlarged, 41 *E.*3. *Fitzh. Warranty* 15.

In an Aſſiſe it is agreed, that where a man releaſeth to the Tenant for life, the Remainder over in taile, the Remainder to the right heirs of the Tenant for life, and the Releaſe is with Warranty for him and his heirs, and the Tenant for life grants his Eſtate over and dyeth, and he in the Remainder in taile enters, that the warranty is determined and avoided, for the Releaſe enures to all the Eſtates, and the warranty cannot enure but to him to whom it was made, and cannot enlarge his Eſtate, 44 *Edw:* 3:10.

In an Aſſiſe of common of paſture, the Releaſe of the Anceſtor of the plaintiff is no barr, although it be with Warranty, for the Warranty doth not extend to the Common, if he were impleaded by a ſtranger of the Common, he ſhall not vouch by reaſon of this Warranty, nor by conſequence ſhall bar him, but the Releaſe of the Plaintiff without warranty is good, but if it be with warranty, and he rely upon the Warranty, it is no barr, 33 *E.*3. *Fitzh. warranty* 74.

LXIII. *The force of Warranty defeaſable.*

TEnant in taile of Reat, makes a grant thereof with warranty and dieth, if the iſſue brings a Formedon, he is barred, becauſe he affirmes it

to be a diſcontinuance, 13 H.7.10 yet it is agreed there, that the iſſue may defeat it by another way, that is, by diſtreſs, for that it is not a diſcontinuance, 33 *Ed.*3. *Br. Formidon* 65. agreeth in all, for it ſhall be the folly of the heir that he will bring an Action which ſuppoſeth him to be out of poſſeſſion, 21 H.7.40. Whereto *Vaviſor* agreeth.

If an Infant be diſſeiſed, and the Anceſtor collaterall doth releaſe with warranty and dyeth, the iſſue at full age may enter, and defeat the Warranty, but if he bring an aſſiſe he ſhall be barred, for the ſame being in force, he ſhall be bound untill it be defeated by entry, 45 H. 6: 63:

It is doubted whether Warranty diſcended to a woman Covert, having right in Remainder upon the giſt in tail made to him who made the Warranty with Remainder to her, whether this ſhall barr a Formedon in Remainder, ſee 3 H.7 9.

If Tenant in taile of an Advowſon be, and a ſtranger uſurpe, Tenant in taile dyeth, and the Anceſtor collaterall releaſeth with Warranty and dieth. The opinion of all &c That this ſhall be a bar to the iſſue in tail, becauſe the grantee had the fee in the Advowſon, before the heir had preſented or recovered by action: So if Tenant in tail had granted the Advowſon in fee and dyed, and the Anceſtor collaterall releaſeth with warranty and dyeth, this ſhall be a barr, 15 *H.*7.9. adjudged acc. But there the Anceſtor who releaſed, dyed before the Tenant in tail which granted &c. and in a Writ of error upon the judgment, the judgment was affirmed, 1 *H.*5 2. agrees of an uſurpation.

Tenant in taile of an Advowſon in groſſe, aliens with Warranty, the iſſue in a *Quare impedit* ſhall be barred by this Warranty with Aſſets, 43 E.3.25. and 26.

LXIV. *If Warranty ſhall barr notwithſtanding no Laches.*

A Releaſe of the Father with warranty to the diſſeiſor of the Grand father, ſhall not hurt the Grand father, and if it diſcend to his ſon, it ſhall hurt him, and ſhall bar him from entry, and action of the fee ſimple, although there were no laches, for during the life of the Grandfather, the ſon could not avoid the Warranty, ſo the warranty of the eldeſt ſon diſcended in the life of the Father, who is deceaſed, it ſhall bind the younger ſon, *Littleton* 154 *plac.* 11. and 12.

If the eldeſt ſon Tenant in tail diſcontinue with Warranty, this ſhall barr the middle ſon in Remainder, yet no Laches, for during the life of the elder brother, he could not bring an action, ſo if he releaſe with warranty to the diſcontinuee of his Father with Warranty, *Littleton fol.* 161. *pl.* 23 and E. 4.12.

Warranty ſhall be avoided ſometimes, becauſe there was no Laches in him upon whom the lands diſcend, as in caſe of an Infant within age at the time of the Warranty diſcended, made by the Tenant in Dower, who aliens in fee with warranty, *Littl. fol.* 163. *plac* 35.

At the Common Law, the heir ſhall be barred by Warranty of his father upon alienation made during the Coverture, yet no Laches in the heir, becauſe during the life of his Mother, he could not have action, ſee *Littl. fol.* 163. 164.

The Uncle releaſeth to the diſcontinuee of the Father, and dyeth, during the life of the father, this ſhall bar the ſon and yet no Laches, *Littleton* 159.

XLV. *Whether Warranty ſhall make a diſcontinuance.*

IF two parceners iſſues in taile by diverſe venters, be diſſeiſed, and the one releaſeth with Warranty and dyeth without iſſue, the other may enter upon the whole, for this warranty is no diſcontinuance, for the one is not heir to the other, *Lit. fol.* 167. *pla.* 46.

Tenant for life, the Remainder in tail, Tenant for life dyeth, one intrudes, he in the Remainder in tail, releaſeth with Warranty, and it was held a diſcontinuance, 43 *E.* 3. 9. 12 *E* 4. 11. agreed by all the Juſtices, for the releaſe, countervalue, entry, and Feoffment, and the Warranty enures upon the poſſeſſion of the fee, by which warranty, the entry of the iſſue is taken away.

If Tenant in taile of a Rent, diſſeize the Ter-Tenant, and makes a Feoffment in fee with Warranty, this is no diſcontinuance, becauſe that the Warranty was made of the land. But *Townſend* held, That if the Tenant in taile of the Rent, releaſeth to the Ter-Tenant with Warranty, this is a diſcontinuance, 3 H. 7. 12.

If Tenant in tail of a Rent in poſſeſſion, granteth it with Warranty, it is a Diſcontinuance if the Tenant attorn, 4 H. 7. 27. By *Brian*, *Huſſey*, and *Fairfax*.

If Tenant in tail of a Seigniory levy a Fine with Warranty thereof, it is a diſcontinuance clearly; but if he releaſeth with Warranty to the Ter-Tenant, his no diſcontinuance, for nothing paſſeth but his Right which he had, *Perſet* 43 *E.* 3. *Per que ſervitia* 18. If Tenant in taile in Remainder, releaſe to Tenant for life with warranty, this barrs the iſſue with aſſets, 34 *Edw.* 3. 9.

How

How Warranty ſhall be avoided and defeated by ſeverall means.

LXVI. *If Warranty ſhall be avoided by Claime and Entry, and how.*

BY *Priſot* clearely, where his Entry is lawfull, there the entry ſhall avoid a collaterall Warranty, 25 *Hen.* 6.63. 24 *Edw.* 3: 38: and 9 *Aſſ. p.* 15. Anceſtor releaſeth with Warranty, if the heir enter in the life of him that warranted, the warranty is taken away for ever, (which obſerve well) and *Babington* 11 H. 6: 51: ſaith, that warranty cannot be avoided but by entry or continuall claim, which countervailes the entry where he dares not enter for fear of death, which ſhall be expreſly ſo pleaded. And by *Finch* 44 *Aſſ: p:* 35. If the entry be before the Warranty diſcend, this ſhall avoid the Warranty. See the title of Warranty *Car.* 11. That where a man enfeoffs another with warranty, there an entry is lawfull, or by Recovery made or had by a ſtranger, by an elder title, before that the Tenant hath vouched in a *Precipe quod reddat*, or before requeſt of warranty made in Aſſiſe, ſhall defeat the Warranty. Otherwiſe after voucher or requeſt made: Contrary of a Releaſe made by him that hath a lawfull entry, there this ſhall not determine the Warranty, for the poſſeſſion continueth as to this regard: And ſee more caſes there of warranty where they ſhall be determined, or where it ſhall remain, and where and how a man ſhall take advantage of a warranty, and when he ſhall recover, and when he ſhall have execution 21 H: 6: 45: and 22 H. 6: 22. and by Juſtice *Scroope*, If the heir begin his ſuit freſhly upon the alienation, living the Tenant in Dower, he ſhall not be rebutted by the warranty of the Tenant in Dower after her death, 3 *Edw.* 3. *North Fitzherbert* 62: but otherwiſe by *Hill* there,

Whether

Whether Warranty ſhall be avoided by Recovery.

LXVII. *Warranty with condition, the Condition being broken the warranty is defeated.*

BY *Littleton*, The poſſeſſion avoided, upon which the VVarranty is diſcended, as if a ſtranger had a lawfull entry by reaſon of the diſſeiſin, or by a Condition or the like, which is mean between the tail and the poſſeſſion, and warrants the purchaſor, there, when the poſſeſſion, upwhich the Collaterall warranty was made is defeated, the Collaterall Warranty is alſo defeated. The ſame Law is, where it cannot diſcend, by reaſon that he who made it, is attainted of Felony or the like, 19 *H.* 6. 59. *acc.* 9 *Edw.* 3. 11. *Brooke Warranty* 99 *acc. Littleton fol.* 169. *plac.* 51. For when a Warranty is made unto a man upon an eſtate which he then had, if the Eſtate be defeated, the Warranty is defeated: As if the Diſcontinuee make a feoffment reſerving unto himſelf a certain Rent, and for default of payment a Re-entry and a Collaterall Warranty of the Anceſtor is made to the Feoffee, who hath the eſtate upon condition, *&c.* and dyeth without iſſue, though this warranty diſcend upon the iſſue in tail, yet if after the Rent be behind, and the diſcontinuee entreth upon the Land, then the iſſue in tail ſhall have his Recovery by Writ of Formedon, becauſe that the Warranty collaterall is defeated, and ſo if any ſuch collaterall warrant be pleaded againſt the iſſue in tail in an Action of Formedon, he may ſhew the matter as aforeſaid, how the warranty is defeated &c. and ſo he may well maintain his Action, *&c. Littleton fol.* 168. *plac.* 51.

LXVIII. *The poſſeſſion avoided upon which the Warranty diſcends, the warranty is avoided.*

BY *Littleton*, The poſſeſſion avoided, upon which the Warranty is diſcended, as if a ſtranger hath lawfull entry by reaſon of the diſſeiſin, or upon condition or the like, which is mean between the taile and the poſſeſſion, and warrants the purchaſer, there, when the poſſeſſion upon which the collaterall warranty was made, is defeated, the Collaterall Warranty is alſo defeated. The ſame Law is, where it cannot diſcend, by reathat he who made it, is attainted of Felony or the like, 19 H. 6. 59. *Concord.*

Edw. 3. 11. *Brooke Warranty* 99. *Concord.* and *Littleton fol.* 168 *plac.* 51.

LXIX. *Warranty avoided by Repriſall of ſuch Eſtate as he granted with Warranty.*

Littleton, fol: 168: *pla:* 52. By taking back of ſuch Eſtate as he gave with Warranty, the Warranty is defeated, as by re-enfeoffment, or diſcent: As where the Father doth enfeoff with Warranty his eldeſt Son upon whom it diſcends, the Warranty is extinct and determined, for that it is diſcended upon him whom he ought to vouch, and he cannot vouch himſelf of the Fee-ſimple to gain the Fee-ſimple; and he is the ſame perſon who ſhall vouch, and which ſhall render in value, and he cannot render to himſelf in value. *Kirton,* Where a man hath two Daughters, and enfeoffeth the one, and dieth, ſhe may vouch her ſelf, and her Siſter, for the Warranty remains for one Moyety. Otherwiſe it is where the Vouchee is ſole Heir, 40 *Ed:* 3: 13: But otherwiſe it is where he doth not receive or take back ſo high and large an Eſtate from his Feoffee, as he gave him, for then the Warranty ſhall be in ſuſpence during the Eſtate, and afterwards ſhall bar the Iſſue, *Litt: fol:* 169: *pla:* 53.

In a Formedon. *Norton,* If a man enfeoff me with Warranty, and I enfeoff him with another, my firſt Warranty holdeth *Skreen,* If two re-enfeoff me with Warranty, and I re-enfeoff one of them, and he is ſued, he ſhall vouch me, and ſhall deraign the Warranty againſt me, and I ſhall have Warranty againſt the two again, 11 H: 4: 42.

LXX. *Warranty by releaſe determined and extinct.*

IF Tenant in tail enfeoff his Uncle, who enfeoffeth another with Warranty, if after the Feoffee by his Deed releaſeth to his Uncle all manner of Warranties, or all manner of Covenants reall, or all manner of Demands by ſuch releaſe the Warranty is extinct, *Litt: fol:* 170. *pla:* 59.

LXXI: *Warranty avoided by Attainder, or Outlawry.*

WArranty alwaies abideth at the Common Law, and the Common Law is, that when a man is attaint or outlawed of felony, which outlawry is an Attainder in Law, that the blod between him and his Son, and all others which ſhould be ſaid his Heirs, is corrupt, ſo, that nothing

by

by diſcent can diſcend unto any that may be ſaid to be his Heir at the Common Law: But the iſſue in the tail as to the Tenements tailed, ſhall not be barred, becauſe he is inheritable by force of the Statute, and not by the courſe of the Common Law: And therefore ſuch Attainder of his Father, of his Anceſtor in the intail, ſhall not put him out of his right, which he ſhould have by force of the intail, *Litt: fol:* 169 *pla:* 54, 55, 56, & 57. & 19 H. 6: 19.

LXXII. Warraanty avoided, becauſe the Law gives not means to avoid it.

IN the Printed Abridgment of Aſſiſes, *fol:* 38. See there in an Aſſiſe of Common, the Warranty of the Anceſtor is no bar, for it is of another thing which is not in Plaint, and ſo the Heir cannot enter into the Warranty to defeat the Warranty, and therefore it ſhall not be a bar to him, becauſe the Law gives him no means by action, nor by entry to avoid it. In a *Formedon, Cui in vita*, and ſuch Actions in which a man cannot enter, there if the Warranty be diſcended and pleaded, this is a bar for ever. *Br. Warranty* 96. *Concor.* 34 *Ed:* 3. *Fitz: warranty* 96. *conc.* 22 *Aſſ: p:* 38: the caſe of Common of Paſture, *Fitz: war.* 66. & 33 *Ed:* 3: *Fitz: Warranty* 74.

LXXIII. Warranty avoided by Plea.

1. IN Aſſiſe, the Warranty of the Uncle of the Plaintiff was pleaded, whoſe Heir he is, and the Plaintiff ſaid, he had never any ſuch Uncle, and it was good, 14 *Aſſ: p:* 1.

2. If an Abbot be diſſeiſed, and he releaſe to the Diſſeiſor with Warranty, this is no diſcontinuance to his Succeſſor, becauſe nothing paſſeth by this releaſe, but only the right which he had during the time that he was Abbot, and the Warranty is expired by his Deprivation, or by his death, *Litt: fol:* 136: *pla:* 12.

3. Nothing by diſcent is a good plea to avoid lineall Warranty, 33 *E:* 3. *Br: Counterplea of warranty* 2.

LXXIV. Warranty avoided in part ſhall be avoided in all.

IN Treſpaſſe by all the Juſtices agreed, If a man gives Lands, the Father, the Son, and the Heirs of the body of the Father, and the Father alieneth

alieneth the Lands with warranty and dieth, the ſon may enter into the moiety, for the diſſeiſin to him, and have his action for the other moiety. *Aſcue*, yet it is to be ſeen whether he may enter into any parcell, for then the warranty as to that parcell is defeated, and Warranty cannot ſtand in part, and be defeated in part, by *Newton* and *Paſton*, and therefore it ſeemeth to me, that by the entry in part, the whole warranty is defeated, for all the Juſtices ſaid that he might enter into the moiety. *Quod nota*, 22 *H.6.* 51. *Conc.* 24 *Ed.*3.38. *Br.war.*35. but by *Littleton contra*, *fol.*157. *plac.*5.

LXXV. *Warranty ſevered ſhall be loſt.*

WHere there be two joint-tenants, and they make partition between them by their agreement, they both defeat their warranty, but if one of them make a Feoffment of that which belongs to him, yet the other ſhall have his warranty of the moiety, becauſe there was no default in him, 29 *Ed.*3. *Fitzh. warranty* 70. and by *Huſſey* and *Choke* in *Præcipe quod reddat*. If I enfeoff two with warranty, and the one enfeoff a ſtranger of his part, I warrant not to the ſaid ſecond Feoffee, 11 *Ed.*4.8.

LXXVI. *Warranty ſuſpend for a time determined for ever.*

A Man hath cauſe of warranty, and yet he cannot take advantage of it, at the time when it is needfull, as againſt an Abbot or a Biſhop in the time of vacany, or againſt the heir in his mothers belly, or where there is no other heir at the time, which might be vouched with him, now this warranty is defeated for ever, as it is there ſaid, 38 *Ed.* 3. 29. but otherwiſe by *Littleton fol.*169. *plac.*53. Where Tenant in Tail enfeoffes another with warranty, and taketh back the eſtate in Tail, or for life, the remainder over in this caſe, the warranty is not utterly aniented, but is put in ſuſpence during the eſtate which the Uncle hath, for after the Uncle is dead without iſſue &c. then he in the Reverſion, or he which is in the remainder ſhall bar the iſſue in the tail of his writ of Formedon by the collaterall warranty, but otherwiſe it is where the Uncle had as great eſtate in the Land of the Feoffee to whom the warranty was made, as the Feoffee had of him.

LXXVII *Warranty recovered, and after the Recovery is reverſed, the warranty is defeated.*

IN Dower the Tenant voucheth the heire, and the Demandant hath Judgement againſt the heir, and the Tenant held peaceably, and after the heir reverſed the Judgment by a writ of deceit, and the Demandant brought a new writ of Dower, the warranty is defeated by the falſity of the Tenant, and by the reverſall of the Judgment in the writ of deceit, *Tit, Scire fac. in Fitzh.* 140.4 *Ed.* 3.36. *Br. warranty* 83.

LXXVIII. *Warranty once executed, where it ſhall be loſt.*

IF I recover Land in value, and after I be ſued for the ſame Lands, I ſhall not vouch by reaſon of the former warranty, becauſe that it was once executed, and the ſame Law is, where I am enfeoffed of Rent with warranty, and afterwards the Land cometh in lieu of the Rent, I ſhall not have warranty of the Land, for a Covenant ſhall be taken ſtrictly, by *Wilby in Formedon* 23, *Ed.* 3. *Fitzh. warranty* 77.

LXXIX. *Warranty deſcended, anothers poſſeſſion who is in the* Poſt, *if it ſhall be loſt.*

IN an Aſſiſe by *A. B.* the Tenant ſaid, that the mother of the Plaintiff being Tenant in Dower, did leaſe the Land to her villain with warranty, whoſe heir the plaintiff is, and demanded Judgment &c. and becauſe that he did not ſhew that the Tenant in Dower died during the Seiſin of the villain, ſo that the collaterall warranty might deſcend upon the poſſeſſion of the villain, ſo that the Right was extinguiſhed in his poſſeſſion, therefore the Aſſiſe was awarded, and ſo ſee, that the warranty which deſcends upon anothers poſſeſſion, who is in the *Poſt*, as here, of the Lord of a villain, it lyeth not. Note, and ſo by the Court, if it had been ſhewed that the warranty had lyen, and the plaintiff barred againſt the villain, it had been a bar now; and ſo ſee that the Lord might rebut by a warranty deſcended in the poſſeſſion of his villain, 22 *Aſſiſe p.* 37.

Note, if a man releaſe with warranty to a baſtard, and the baſtard dyeth without heir in the life of him that releaſed, the Lord entreth for eſcheat, and then, he that made the warranty dieth, and his heir brings an action againſt the Lord he ſhall not plead this warranty, the reaſon ſeemeth to be, for that it is deſcended upon another poſſeſſion, then it was when

when it was made, and alſo this poſſeſſion is in the *Poſt*, and not in the *Per*, *Quod nota*, 29 *Aſſ. pl.* 34.

It is granted upon argument in a writ of error, where a man makes a feoffment with warranty and dieth, his youngeſt ſon or baſtard may be vouched, but if the *Mulier* dieth without heir, the baſtard ſhall not be vouched, for now the warranty is determined, as where the Lord hath been ſeiſed by eſcheat, and ſo it ſeemeth, that the concluſion of the inheritance ſhall not ſtay, but between the *Mulier* and the heir, and not between ſtrangers, 5 *Hen.* 7. 2.

LXXX. *Where warranty ſhall be extinct, the eſtate being in force.*

IT ſeems by *Thorp*, 40 *Ed.* 3. 14. If my father enfeoff me with warranty, and dieth ſeiſed of Lands in Borough Engliſh, which deſcends unto my younger brother, the warranty is extinct, for it deſcends onely upon me, otherwiſe it is, if the Father enfeoff one of his daughters and dieth, for there ſhe ſhall vouch her ſelf and her ſiſter, yet upon ſuch Feoffment ſhewed in the former caſe, the elder had the voucher, but in the argument of the Caſe it ſeemed to *Thorp*, as before, 41 *Ed* 3. 25. he had the Voucher for that cauſe, 43 *Ed.* 3. 23. *Finch*, if my father enfeoff me with warranty and dieth, the warranty is defeated.

Two joint-tenants enfeoff the heir of one of them, and his wife, and they being impleaded vouch the husband, and the heir of the other as Tenants, upon this cauſe ſhewed, ſee 29 *Ed.* 3. 46.

Where there be two joint-tenants, and they make partition by their own agreement, they have both loſt their warranty, but by the Feoffment of the one of his part, the other ſhall have his warranty of the moiety, becauſe there was no default in him. *Quere* if the Feoffee of the other ſhall have the warranty, as aſſignee. It ſeemeth he ſhall not, for it is to them both, 29 *Ed* 3. *Fitzh.* 70. 2 H. 6. 7. *Rolf* ſaith, that after Partition, none ſhall have aid of the other, to have warranty *Peramount*, *Quere*.

One joint-tenant ſhall not have voucher without his companion, if the jointure continue, but if the moiety be recovered by the default of the one, the other ſhall have voucher for the moiety, 48 *Ed.* 3. 17.

One parcener ſhall not have the voucher without her companion, unleſſe upon ſeverance after aid prayer, and after Partition, the warranty holdeth between them. So if one after partition make a Feoffment to her ſon and dieth, this ſon ſhall have aid of the other parcener, and they two ſhall vouch, 47 *Ed.* 3. 23. 8 *Ri.* 2. *aid of the King* 15. If one make a Feoffment before partition, and be vouched ſhe ſhall have aid of her ſiſter, and they both ſhall have the warranty *Peramount*.

The Tenant ſhall have the warranty, notwithſtanding the condition broken, if I have not entred for the condition, *Treſil.* 50 *Edw.* 3. 12. 3 *Aſſiſe* 9.

Warranty of an Abbot is taken away by his deprivation or death, *Littleton* 136. *plac.* 12.

If a Feoffee with warranty, take the Feoffor to husband, it ſeems to me that the warranty is ſuſpended during the Coverture, but afterwards the heir ſhall have it, *tamen quere For.* 3 *Ed.* 3. *Fitzh. voucher* 201. adjudged that the wife received upon default her husband, ſhall vouch her husband for ſuch cauſe ſhewed, and had it, but otherwiſe it was againſt the demandant, which might by receipt of the wife of the Feoffor, and his Seiſin which is ſufficient to have the voucher, but to bind the husband, it ſeemeth not.

If a Feoffee reinfeoff for life, there the Feoffor being vouched ſhall revouch by the firſt warranty, but if *A.* be enfeoffed for life, and *A.* leaſeth to the Feoffor for life, there if the Feoffor vouch *A.* he ſhall not revouch him, as it ſeemeth againſt the demandant, 7 Ed. 3. 44.

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Ex. J. M.
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Paging very irregular; matter complete

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